102D CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
102-1034

REVENUE ACT OF 1992

CONFERENCE REPORT

TO ACCOMPANY

H.R. 11

OCTOBER 5, 1992.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
59-692 WASHINGTON : 1992

For sale by the U.S. Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328

102D CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
102–1034

REVENUE ACT OF 1992

OCTOBER 5, 1992.—Ordered to be printed

Mr. ROSTENKOWSKI, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 11]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11), to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Revenue Act of 1992".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title, etc.

TITLE I—PROVISIONS RELATING TO DISTRESSED URBAN AND RURAL AREAS

Subtitle A—Urban Tax Enterprise Zones and Rural Development Investment Zones

Sec. 1101. Statement of purpose.

PART I—DESIGNATION AND TAX INCENTIVES

Sec. 1102. Designation and treatment of urban tax enterprise zones and rural development investment zones.
Sec. 1103. Technical and conforming amendments.
Sec. 1104. Effective date.

PART II—REDEVELOPMENT BONDS FOR TAX ENTERPRISE ZONES

Sec. 1111. Special rules for redevelopment bonds providing financing for tax enterprise zones.

PART III—CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS

Sec. 1121. Credit for contributions to certain community development corporations.

PART IV—INDIAN EMPLOYMENT AND INVESTMENT

Sec. 1131. Investment tax credit for property on Indian reservations.
Sec. 1132. Indian employment credit.

PART V—STUDY

Sec. 1141. Study of effectiveness of tax enterprise zone incentives.

Subtitle B—Permanent Extension of Certain Expiring Tax Provisions Primarily Affecting Urban Areas

Sec. 1201. Low-income housing credit.
Sec. 1202. Targeted jobs credit.
Sec. 1203. Qualified mortgage bonds.

Subtitle C—Foster Care and Income Security

Sec. 1301. References.

PART I—CHILD WELFARE; FOSTER CARE; SUBSTANCE ABUSE TREATMENT AND SERVICES

Sec. 1311. Child welfare services designed to strengthen and preserve families, and substance abuse prevention and treatment.
Sec. 1312. Grant program for State court systems to assess and improve procedures in child welfare cases.
Sec. 1313. State directory of services.
Sec. 1314. Required protections for foster children.
Sec. 1315. States required to report on measures taken to comply with the Indian Child Welfare Act.
Sec. 1316. Reports on child welfare services and expenditures.
Sec. 1317. Involvement of private parties in the development of State plans.
Sec. 1318. Comprehensive service projects.
Sec. 1319. Dissolved adoptions.
Sec. 1320. Extension of definition of children with special needs.
Sec. 1321. Study of reasonable efforts requirement by advisory committee.
Sec. 1322. Adoption expense deduction.
Sec. 1323. Periodic reevaluation of foster care maintenance payments.
Sec. 1324. Case review system requirements.
Sec. 1325. Health care plans for foster children.
Sec. 1326. Placement accountability.
Sec. 1327. Independent living.
Sec. 1328. Elimination of foster care ceilings and of authority to transfer unused foster care funds to child welfare services programs.
Sec. 1329. Regulations for training of agency staff and of foster and adoptive parents.
Sec. 1330. Foster and adoptive parent training.
Sec. 1331. Child welfare traineeships.
Sec. 1332. Publication of program data.
Sec. 1333. Review of child welfare activities.
Sec. 1334. Automated systems.
Sec. 1335. Research and evaluations.
Sec. 1336. Child welfare demonstration projects.
Sec. 1337. Demonstration of independent living services for young adults.
Sec. 1338. Home rebuilders demonstration project.

Sec. 1339. Commission on Childhood Disability.

PART II—OTHER INCOME SECURITY AND HUMAN RESOURCES PROVISIONS

SUBPART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

Sec. 1341. Disregard of income and resources designated for education, training, and employability.
Sec. 1342. Disregard of income and resources related to self-employment.
Sec. 1343. Treatment of student earnings.
Sec. 1344. Encouraging use of transitional child care program.
Sec. 1345. Increase in stepparent income disregard.
Sec. 1346. State option to use retrospective budgeting without monthly reporting.
Sec. 1347. Delay in requirement that outlying areas operate an AFDC–UP program.

SUBPART B—JOBS PROGRAM

Sec. 1351. Funding for the jobs program.
Sec. 1352. Modification of the 20-hour rule.
Sec. 1353. Assignment of individuals to work supplementation program.
Sec. 1354. Expansion of coverage for Indian tribes.
Sec. 1355. Modification of jobs performance standards requirement.

SUBPART C—CHILD SUPPORT ENFORCEMENT

Sec. 1361. Reports to credit bureaus on persons delinquent in child support payments.
Sec. 1362. Agreement to assist in locating missing children under the parent locator service.

SUBPART D—COMMUNITY WORKS PROGRESS DEMONSTRATIONS

Sec. 1371. Community works progress demonstration projects.

SUBPART E—RESEARCH AND DEMONSTRATION PROVISIONS

Sec. 1381. Measurement and reporting of welfare dependency.
Sec. 1382. Extension of demonstration to expand job opportunities.
Sec. 1383. Early childhood development projects.
Sec. 1384. Extension of National Commission on Children.
Sec. 1385. Secretarial report on the differences in program rules under the food stamp program, aid to families with dependent children, and medicaid programs.
Sec. 1386. New Hope Demonstration Project.

SUBPART F—SUPPLEMENTAL SECURITY INCOME

Sec. 1391. Prevention of adverse effects on eligibility for, and amount of, SSI benefits when spouse or parent of beneficiary is absent from the household due to active military service.
Sec. 1392. Eligibility for children of Armed Forces personnel residing outside the United States other than in foreign countries.
Sec. 1393. Definition of disability for children under age 18 applied to all individuals under age 18.
Sec. 1394. Valuation of certain in-kind support and maintenance when there is a cost of living adjustments in SSI benefits.

SUBPART G—OTHER INCOME SECURITY PROVISIONS

Sec. 1401. Effect of failure to carry out State plan.
Sec. 1402. Adult in family or household allowed to attest to citizenship status of family or household members under AFDC and medicaid.
Sec. 1403. Exclusion from income of $4,000 of income received in any year by Indians from interests individually held in trust or restricted lands.
Sec. 1404. Disclosure of information to Railroad Retirement Board.

TITLE II—GROWTH INCENTIVES

Subtitle A—Increased Savings

PART I—RETIREMENT SAVINGS INCENTIVES

SUBPART A—IRA DEDUCTION

Sec. 2001. Increase in income limitations.
Sec. 2002. Inflation adjustment for deductible amount.
Sec. 2003. Coordination of IRA deduction limit with elective deferral limit.

SUBPART B—NONDEDUCTIBLE TAX-FREE IRAS

Sec. 2011. Establishment of nondeductible tax-free individual retirement accounts.

PART II—PENALTY-FREE DISTRIBUTIONS

Sec. 2021. Distributions from certain plans may be used without penalty to purchase first homes, to pay higher education or financially devastating medical expenses, or by the long-term unemployed.
Sec. 2022. Contributions must be held at least 5 years in certain cases.

Subtitle B—Economic Development Provisions

PART I—INVESTMENT IN REAL ESTATE

SUBPART A—MODIFICATION OF PASSIVE LOSS RULES

Sec. 2101. Application of passive loss rules to rental real estate activities.

SUBPART B—PROVISIONS RELATING TO REAL ESTATE INVESTMENTS BY PENSION FUNDS

Sec. 2111. Real estate property acquired by a qualified organization.
Sec. 2112. Special rules for investments in partnerships.
Sec. 2113. Title-holding companies permitted to receive small amounts of unrelated business taxable income.
Sec. 2114. Exclusion from unrelated business tax of gains from certain property.
Sec. 2115. Exclusion from unrelated business tax of certain fees and option premiums.
Sec. 2116. Treatment of pension fund investments in real estate investment trusts.

SUBPART C—DISCHARGE OF INDEBTEDNESS

Sec. 2121. Exclusion from gross income for income from discharge of qualified real property business indebtedness.

PART II—EXTENSION OF CERTAIN EXPIRING TAX PROVISIONS

Sec. 2131. Research credit.
Sec. 2132. Employer-provided educational assistance.
Sec. 2133. Excise tax on certain vaccines.
Sec. 2134. Certain transfers to railroad retirement account.
Sec. 2135. Health insurance costs of self-employed individuals.
Sec. 2136. Tax credit for orphan drug clinical testing expenses.
Sec. 2137. Qualified small issue bonds.

PART III—OTHER INCENTIVES

Sec. 2151. Elimination of ACE depreciation adjustment.

Subtitle C—Repeal of Certain Luxury Excise Taxes; Imposition of Tax on Diesel Fuel Used in Noncommercial Boats

Sec. 2201. Repeal of luxury excise taxes other than on passenger vehicles.
Sec. 2202. Tax on diesel fuel used in noncommercial boats.

Subtitle D—Credit for Portion of Employer Social Security Taxes Paid With Respect to Employee Cash Tips

Sec. 2301. Credit for portion of employer social security taxes paid with respect to employee cash tips.

TITLE III—OFFSETTING REVENUE INCREASES

Subtitle A—General Provisions

Sec. 3001. Mark to market accounting method for securities dealers.
Sec. 3002. Clarification of treatment of certain FSLIC financial assistance.
Sec. 3003. Special rules for rental use of dwelling for less than 15 days per year.
Sec. 3004. Increase in recovery period for nonresidential real property.
Sec. 3005. Modifications to deductions for certain moving expenses.
Sec. 3006. Extension of top estate and gift tax rates.
Sec. 3007. Denial of deduction relating to travel expenses.
Sec. 3008. Treatment of certain high yield discount obligations.
Sec. 3009. Elimination of deduction for club membership fees.
Sec. 3010. Increase in casualty loss deductible.

Sec. 3011. Additional substantiation requirements for certain meals and entertainment expenses.
Sec. 3012. Passive activity losses and credits reduced under section 108.
Sec. 3013. Repeal of stock for debt exception in determining income from discharge of indebtedness.

Subtitle B—Estimated Tax Provisions

Sec. 3101. Individual estimated tax provisions.
Sec. 3102. Corporate estimated tax provisions.

Subtitle C—Administrative Provisions

Sec. 3201. Disallowance of interest on certain overpayments of tax.
Sec. 3202. Increase in withholding from supplemental wage payments.

Subtitle D—Alternative Taxable Years

Sec. 3301. Election of taxable year other than required taxable year.
Sec. 3302. Required payments for entities electing not to have required taxable year.
Sec. 3303. Limitation on certain amounts paid to employee-owners of personal service corporations.
Sec. 3304. Effective date.

TITLE IV—SIMPLIFICATION PROVISIONS

Subtitle A—Provisions Relating to Individuals

PART I—PROVISIONS RELATING TO EARNED INCOME CREDIT

Sec. 4101. Repeal of certain interaction rules.
Sec. 4102. Military personnel stationed outside the United States no longer excluded from earned income credit, etc.

PART II—PROVISIONS RELATING TO ROLLOVER OF GAIN ON SALE OF PRINCIPAL RESIDENCE

Sec. 4111. Multiple sales within rollover period.
Sec. 4112. Special rules in case of divorce.
Sec. 4113. Extension of rollover period where taxpayer has substantial frozen deposits.

PART III—OTHER PROVISIONS

Sec. 4121. De minimis exception to passive loss rules.
Sec. 4122. Payment of tax by credit card.
Sec. 4123. Modifications to election to include child's income on parent's return.
Sec. 4124. Simplified foreign tax credit limitation for individuals.
Sec. 4125. Treatment of personal transactions by individuals under foreign currency rules.
Sec. 4126. Tax treatment of certain combat pay.
Sec. 4127. Expanded access to simplified income tax returns.
Sec. 4128. Treatment of certain reimbursed expenses of rural mail carriers.

Subtitle B—Pension Simplification

PART I—SIMPLIFIED DISTRIBUTION RULES

Sec. 4201. Repeal of 5-year income averaging for lump-sum distributions.
Sec. 4202. Repeal of $5,000 exclusion of employees' death benefits.
Sec. 4203. Simplified method for taxing annuity distributions under certain employer plans.
Sec. 4204. Required distributions.

PART II—INCREASED ACCESS TO PENSION PLANS

Sec. 4211. Modifications of simplified employee pensions.
Sec. 4212. Tax exempt organizations eligible under section 401(k).
Sec. 4213. Duties of sponsors of certain prototype plans.

PART III—NONDISCRIMINATION PROVISIONS

Sec. 4221. Definition of highly compensated employees.
Sec. 4222. Modification of additional participation requirements.

Sec. 4223. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions.

PART IV—MISCELLANEOUS SIMPLIFICATION

Sec. 4231. Treatment of leased employees.
Sec. 4232. Modifications of cost-of-living adjustments.
Sec. 4233. Plans covering self-employed individuals.
Sec. 4234. Elimination of special vesting rule for multiemployer plans.
Sec. 4235. Full-funding limitation of multiemployer plans.
Sec. 4236. Alternative full-funding limitation.
Sec. 4237. Distributions under rural cooperative plans.
Sec. 4238. Treatment of governmental plans under section 415.
Sec. 4239. Uniform retirement age.
Sec. 4240. Uniform penalty provisions to apply to certain pension reporting requirements.
Sec. 4241. Contributions on behalf of disabled employees.
Sec. 4242. Affiliated employers.
Sec. 4243. Special rules for plans covering pilots.
Sec. 4244. National Commission on Private Pension Plans.
Sec. 4245. Church plans.
Sec. 4246. Treatment of deferred compensation plans of State and local governments and tax-exempt organizations.
Sec. 4247. Treatment of employer reversions required by contract to be paid to the United States.
Sec. 4248. Continuation health coverage for employees of failed financial institutions.
Sec. 4249. Date for adoption of plan amendments.

Subtitle C—Treatment of Large Partnerships

PART I—GENERAL PROVISIONS

Sec. 4301. Simplified flow-through for large partnerships.
Sec. 4302. Simplified audit procedures for large partnerships.
Sec. 4303. Due date for furnishing information to partners of large partnerships.
Sec. 4304. Returns may be required on magnetic media.
Sec. 4305. Treatment of partnership items of individual retirement plans.
Sec. 4306. Effective date.

PART II—PROVISIONS RELATED TO TEFRA PARTNERSHIP PROCEEDINGS

Sec. 4311. Treatment of partnership items in deficiency proceedings.
Sec. 4312. Partnership return to be determinative of audit procedures to be followed.
Sec. 4313. Provisions relating to statute of limitations.
Sec. 4314. Expansion of small partnership exception.
Sec. 4315. Exclusion of partial settlements from 1 year limitation on assessment.
Sec. 4316. Extension of time for filing a request for administrative adjustment.
Sec. 4317. Availability of innocent spouse relief in context of partnership proceedings.
Sec. 4318. Determination of penalties at partnership level.
Sec. 4319. Provisions relating to court jurisdiction, etc.
Sec. 4320. Treatment of premature petitions filed by notice partners or 5-percent groups.
Sec. 4321. Bonds in case of appeals from TEFRA proceeding.
Sec. 4322. Suspension of interest where delay in computational adjustment resulting from TEFRA settlements.
Sec. 4323. Special rules for administrative adjustment requests with respect to bad debts or worthless securities.

Subtitle D—Foreign Provisions

PART I—SIMPLIFICATION OF TREATMENT OF PASSIVE FOREIGN CORPORATIONS

Sec. 4401. Repeal of foreign personal holding company rules and foreign investment company rules.
Sec. 4402. Replacement for passive foreign investment company rules.
Sec. 4403. Technical and conforming amendments.
Sec. 4404. Effective date.

PART II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS

Sec. 4411. Gain on certain stock sales by controlled foreign corporations treated as dividends.
Sec. 4412. Authority to prescribe simplified method for applying section 960(b)(2).
Sec. 4413. Miscellaneous modifications to subpart F.
Sec. 4414. Indirect foreign tax credit allowed for certain lower tier companies.
Sec. 4415. Study on investments by controlled foreign corporation in United States property.

PART III—OTHER PROVISIONS

Sec. 4421. Exchange rate used in translating foreign taxes.
Sec. 4422. Election to use simplified section 904 limitation for alternative minimum tax.
Sec. 4423. Modification of section 1491.
Sec. 4424. Modification of section 367(b).

Subtitle E—Treatment of Intangibles

Sec. 4501. Amortization of goodwill and certain other intangibles.
Sec. 4502. Treatment of certain payments to retired or deceased partner.

Subtitle F—Other Income Tax Provisions

PART I—PROVISIONS RELATING TO SUBCHAPTER S CORPORATIONS

Sec. 4601. Determination of whether corporation has 1 class of stock.
Sec. 4602. Authority to validate certain invalid elections.
Sec. 4603. Treatment of distributions during loss years.
Sec. 4604. Other modifications.

PART II—ACCOUNTING PROVISIONS

Sec. 4611. Modifications to look-back method for long-term contracts.
Sec. 4612. Simplified method for capitalizing certain indirect costs.
Sec. 4613. Treatment of certain amounts received by operators of licensed cotton warehouses.

PART III—PROVISIONS RELATING TO REGULATED INVESTMENT COMPANIES

Sec. 4621. Repeal of 30-percent gross income limitation.
Sec. 4622. Basis rules for shares in open-end regulated investment companies.
Sec. 4623. Nonrecognition treatment for certain transfers by common trust funds to regulated investment companies.
Sec. 4624. Nonrecognition treatment for certain transfers by regulated investment companies to common trust funds.

PART IV—TAX-EXEMPT BOND PROVISIONS

Sec. 4631. Repeal of $100,000 limitation on unspent proceeds under 1-year exception from rebate.
Sec. 4632. Exception from rebate for earnings on bona fide debt service fund under construction bond rules.
Sec. 4633. Aggregation of issues rules not to apply to tax or revenue anticipation bonds.
Sec. 4634. Exception from pro rata allocation of interest expense of financial institutions to tax-exempt interest for small issuers increased to $20,000,000.
Sec. 4635. Expanded exception from rebate for issuers issuing $10,000,000 or less of bonds.
Sec. 4636. Repeal of debt service-based limitation on investment in certain nonpurpose investments.
Sec. 4637. Repeal of expired provisions.
Sec. 4638. Clarification of investment-type property.
Sec. 4639. Tax-exempt financing for United Nations office buildings.
Sec. 4640. Tax treatment of 501(c)(3) bonds similar to governmental bonds.

PART V—INSURANCE PROVISIONS

Sec. 4641. Treatment of certain insurance contracts on retired lives.
Sec. 4642. Treatment of modified guaranteed contracts.

Part VI—Cooperatives

Sec. 4651. Discharge of indebtedness income from prepayment of REA loans.
Sec. 4652. Treatment of certain amounts received by a cooperative telephone company.
Sec. 4653. Tax treatment of cooperative housing corporations.

Part VII—Other Provisions

Sec. 4661. Closing of partnership taxable year with respect to deceased partner, etc.
Sec. 4662. Repeal of special treatment of ownership changes in determining adjusted current earnings.
Sec. 4663. Authorization for Bureau of Land Management use of reforestation trust fund.
Sec. 4664. Private foundations permitted to use common investment funds.
Sec. 4665. Modification of credit for producing fuel from a nonconventional source.

Subtitle G—Estate and Gift Tax Provisions

Sec. 4701. Clarification of waiver of certain rights of recovery.
Sec. 4702. Adjustments for gifts within 3 years of decedent's death.
Sec. 4703. Clarification of qualified terminable interest rules.
Sec. 4704. Transitional rule under section 2056a.
Sec. 4705. Opportunity to correct certain failures under section 2032A.
Sec. 4706. Repeal of certain throwback rules applicable to domestic trusts.
Sec. 4707. Certain cash rentals of farmland not to cause recapture of special estate tax valuation.

Subtitle H—Excise Tax Simplification

Part I—Fuel Tax Provisions

Sec. 4801. Repeal of certain retail and use taxes.
Sec. 4802. Revision of fuel tax credit and refund procedures.
Sec. 4803. Authority to provide exceptions from information reporting with respect to diesel fuel and aviation fuel.
Sec. 4804. Technical and conforming amendments.
Sec. 4805. Effective date.

Part II—Provisions Related to Distilled Spirits, Wines, and Beer

Sec. 4811. Credit or refund for imported bottled distilled spirits returned to distilled spirits plant.
Sec. 4812. Authority to cancel or credit export bonds without submission of records.
Sec. 4813. Repeal of required maintenance of records on premises of distilled spirits plant.
Sec. 4814. Fermented material from any brewery may be received at a distilled spirits plant.
Sec. 4815. Repeal of requirement for wholesale dealers in liquors to post sign.
Sec. 4816. Refund of tax to wine returned to bond not limited to unmerchantable wine.
Sec. 4817. Use of additional ameliorating material in certain wines.
Sec. 4818. Domestically-produced beer may be withdrawn free of tax for use of foreign embassies, legations, etc.
Sec. 4819. Beer may be withdrawn free of tax for destruction.
Sec. 4820. Authority to allow drawback on exported beer without submission of records.
Sec. 4821. Transfer to brewery of beer imported in bulk without payment of tax.
Sec. 4822. Use of other agricultural byproducts in wine production.

Part III—Other Excise Tax Provisions

Sec. 4831. Authority to grant exemptions from registration requirements.
Sec. 4832. Small manufacturers exempt from firearms excise tax.
Sec. 4833. Repeal of expired provisions.
Sec. 4834. Exemption for transportation on certain ferries.
Sec. 4835. Application of certain taxes to certain business aircraft.

Subtitle I—Administrative Provisions

Part I—General Provisions

Sec. 4901. Simplification of employment taxes on domestic services.

Sec. 4902. Use of reproductions of returns stored in digital image format.
Sec. 4903. Repeal of authority to disclose whether prospective juror has been audited.
Sec. 4904. Repeal of special audit provisions for subchapter S items.
Sec. 4905. Clarification of statute of limitations.
Sec. 4906. Certain notices disregarded under provision increasing interest rate on large corporate underpayments.

PART II—TAX COURT PROCEDURES

Sec. 4911. Overpayment determinations of tax court.
Sec. 4912. Awarding of administrative costs.
Sec. 4913. Redetermination of interest pursuant to motion.
Sec. 4914. Application of net worth requirement for awards of litigation costs.

PART III—AUTHORITY FOR CERTAIN COOPERATIVE AGREEMENTS

Sec. 4921. Cooperative agreements with State tax authorities.

PART IV—OTHER PROVISIONS

Sec. 4931. Extension of authority for undercover operations.
Sec. 4932. Disclosure of returns on cash transactions.
Sec. 4933. Alternative methods of verifying returns.

TITLE V—TAXPAYER BILL OF RIGHTS 2

Sec. 5000. Short title.

Subtitle A—Taxpayer Advocate

Sec. 5001. Establishment of position of taxpayer advocate within Internal Revenue Service.
Sec. 5002. Expansion of authority to issue taxpayer assistance orders.

Subtitle B—Modifications to Installment Agreement Provisions

Sec. 5101. Notification of reasons for termination or denial of installment agreements.
Sec. 5102. Administrative review of denial of request for, or termination of, installment agreement.

Subtitle C—Interest

Sec. 5201. Expansion of authority to abate interest.
Sec. 5202. Extension of interest-free period for payment of tax after notice and demand.

Subtitle D—Joint Returns

Sec. 5301. Disclosure of collection activities.
Sec. 5302. Joint return may be made after separate returns without full payment of tax.

Subtitle E—Collection Activities

Sec. 5401. Modifications to lien and levy provisions.
Sec. 5402. Offers-in-compromise.
Sec. 5403. Notification of examination.
Sec. 5404. Increase in limit on recovery of civil damages for unauthorized collection actions.
Sec. 5405. Safeguards relating to designated summons.

Subtitle F—Information Returns

Sec. 5501. Phone number of person providing payee statements required to be shown on such statement.
Sec. 5502. Civil damages for fraudulent filing of information returns.
Sec. 5503. Requirement to verify accuracy of information returns.

Subtitle G—Modifications to Penalty for Failure to Collect and Pay Over Tax

Sec. 5601. Preliminary notice requirement.
Sec. 5602. No penalty if prompt notification of the Secretary.
Sec. 5603. Disclosure of certain information where more than 1 person subject to penalty.

Sec. 5604. Penalties under section 6672.

Subtitle H—Awarding of Costs and Certain Fees

Sec. 5701. Motion for disclosure of information.
Sec. 5702. Increased limit on attorney fees.
Sec. 5703. Failure to agree to extension not taken into account.
Sec. 5704. Effective date.

Subtitle I—Other Provisions

Sec. 5801. Required content of certain notices.
Sec. 5802. Treatment of substitute returns under section 6651.
Sec. 5803. Relief from retroactive application of Treasury Department regulations.
Sec. 5804. Required notice of certain payments.
Sec. 5805. Unauthorized enticement of information disclosure.

Subtitle J—Form Modifications; Studies

Sec. 5900. Definitions.

PART I—FORM MODIFICATIONS

Sec. 5901. Explanation of certain provisions.
Sec. 5902. Improved procedures for notifying Service of change of address or name.
Sec. 5903. Rights and responsibilities of divorced individuals.

PART II—STUDIES

Sec. 5911. Pilot program for appeal of enforcement actions.
Sec. 5912. Study on taxpayers with special needs.
Sec. 5913. Reports on taxpayer-rights education program.
Sec. 5914. Biennial reports on misconduct by Internal Revenue Service employees.
Sec. 5915. Study of notices of deficiency.
Sec. 5916. Notice and form accuracy study.
Sec. 5917. Internal Revenue Service employees' suggestions study.

TITLE VI—TECHNICAL CORRECTIONS

Sec. 6100. Coordination with other titles.

Subtitle A—Revenue Provisions

Sec. 6101. Amendments related to Revenue Reconciliation Act of 1990.
Sec. 6102. Miscellaneous provisions.

Subtitle B—Tariff and Customs

Sec. 6201. Technical amendments to the Harmonized Tariff Schedule of the United States.
Sec. 6202. Clarification regarding the application of customs user fees.
Sec. 6203. Technical amendments to the Omnibus Trade and Competitiveness Act of 1988.
Sec. 6204. Technical amendment to the Customs and Trade Act of 1990.
Sec. 6205. Technical amendments regarding certain beneficiary countries.
Sec. 6206. Clarification of fees for certain customs services.

TITLE VII—MISCELLANEOUS REVENUE PROVISIONS

Subtitle A—Provisions Primarily Affecting Individuals

Sec. 7101. Income exclusion for education bonds expanded.
Sec. 7102. Losses allowed against gain recognized on sale of principal residence.
Sec. 7103. Clarification of treatment of veterans' benefits.
Sec. 7104. Treatment of cancellation of certain student loans.
Sec. 7105. IRA rollovers of military separation pay.
Sec. 7106. Modification of involuntary conversion rules for certain disaster-related conversions.
Sec. 7107. Certain foster care payments excluded from gross income.
Sec. 7108. Penalty free withdrawals from annuities for higher education expenses.
Sec. 7109. Application of low-income housing credits and mortgage revenue bonds to natural disaster areas.

Subtitle B—Charitable Contribution Provisions

Sec. 7201. Alternative minimum tax treatment.
Sec. 7202. Substantiation requirement for deduction of certain charitable contributions.
Sec. 7203. Disclosure related to quid pro quo contributions.
Sec. 7204. Certain organizations required to disclose nonexempt status.
Sec. 7205. Exempt organizations required to provide copy of return.

Subtitle C—Other Provisions Relating to Tax-Exempt Organizations

Sec. 7301. Required notices to charitable beneficiaries of charitable remainder trusts.
Sec. 7302. Application of private inurement rule to tax-exempt civic leagues.
Sec. 7303. Exclusion from unrelated business taxable income for certain sponsorship payments.
Sec. 7304. Treatment of certain amounts received by Olympic organizations.
Sec. 7306. Changes in application of wagering taxes to charitable organizations.
Sec. 7307. Conducting of certain games of chance not treated as unrelated trade or business.
Sec. 7308. Treatment of certain nonprofit organizations providing health benefits.
Sec. 7309. Treatment of Indian tribal governments under section 403(b).
Sec. 7310. Certain costs of private foundation in removing hazardous substances treated as qualifying distribution.
Sec. 7311. Unrelated business income tax treatment of mailing lists.

Subtitle D—Employee Benefit Provisions

Sec. 7401. Treatment of certain reimbursed flight training expenses.
Sec. 7402. Treatment of certain securities transferred to ESOP from terminated pension plan.
Sec. 7403. Treatment of certain disability benefits received by former police officers or firefighters.
Sec. 7404. Fringe benefits of airline affiliate employees.

Subtitle E—Tax-Exempt Bond Provisions

Sec. 7501. Increase in size of loans permitted under certain bond-financed programs.
Sec. 7502. Treatment of certain port authority bonds.
Sec. 7503. Modification of limitation on capital expenditures for small issue bonds.
Sec. 7504. Application of 1988 technical correction.

Subtitle F—Other Income Tax Provisions

Sec. 7601. Provisions related to S corporations.
Sec. 7602. Treatment of livestock sold on account of weather-related conditions.
Sec. 7603. Depreciation period for tuxedos held for rental.
Sec. 7604. Deduction by personal service corporation of certain accrued year-end compensation payable to employee-owners.
Sec. 7605. Treatment of partnership investment expenses under minimum tax.
Sec. 7606. Clarification of treatment of certain buildings under rehabilitation credit.
Sec. 7607. Minimum tax treatment of certain property and casualty insurance companies.
Sec. 7608. Tax treatment of associations resulting from mergers of certain farm credit associations.
Sec. 7609. Restoration of prior law treatment of corporate reorganizations through exchange of debt instruments.
Sec. 7610. Treatment of deposits under certain perpetual insurance policies.
Sec. 7611. Tax treatment of certain distributions made by Alaska native corporations.
Sec. 7612. Deduction for small property and casualty insurance companies.
Sec. 7613. Treatment of not-for-profit residual market insurance companies.
Sec. 7614. Gains and losses from certain dispositions by farmers cooperatives.
Sec. 7615. Special rule for inclusion of crop proceeds of certain disaster victims.
Sec. 7616. Reporting of real estate transactions.
Sec. 7617. Standing for certain taxpayers with regard to sale of net operating losses.
Sec. 7618. Research credit base amount for start-up companies.
Sec. 7619. Application of passive loss limitations to timber activities.

Subtitle G—Provisions Relating to Taxes Other Than Income Taxes

Sec. 7701. Tax-free sales of trucks assembled by educational organizations.

Sec. 7702. Clarification of exemption from firearms tax for reloading of shells and cartridges supplied by customer.
Sec. 7703. Explosives handling equipment exempt from heavy truck tax.
Sec. 7704. Termination of certain special estate tax valuation recapture provisions.
Sec. 7705. Clarification of employment tax status of certain fishermen.
Sec. 7706. Services performed by full-time students for seasonal children's camps exempt from social security taxes.

Subtitle H—Tax Treatment of Certain Cargo Containers

Sec. 7801. Treatment of certain cargo containers.
Sec. 7802. No inference.
Sec. 7803. Revocation of prior election.
Sec. 7804. Effective date.

Subtitle I—PBGC Report on Employers With Underfunded Plans

Sec. 7901. Report on employers with underfunded plans.

Subtitle J—Studies and Reports

Part I—Studies

Sec. 7911. Study of semi-conductor manufacturing equipment.
Sec. 7912. Municipal bond fund study.
Sec. 7913. Study of travel expenses of loggers.

Part II—American Citizens Annual Report

Sec. 7918. American Citizens Annual Report Act.

Subtitle K—Mount Rushmore Commemorative Coin Act Amendments

Sec. 7921. Mount Rushmore Commemorative Coin Act.

Subtitle L—Annuity Benefits for Certain Ex-Spouses of Central Intelligence Agency Employees

Sec. 7931. Survivor annuity for certain ex-spouses of CIA employees.
Sec. 7932. Retirement annuity for certain ex-spouses of CIA employees.
Sec. 7933. Health benefits.
Sec. 7934. Source of payment for annuities.
Sec. 7935. Effective date.

Subtitle M—Repeal of Coast Guard Recreational Boat User Fee

Sec. 7941. Recreational boat tax repeal.
Sec. 7942. Automated tariff filing and information system.

TITLE VIII—CUSTOMS AND TRADE PROVISIONS

Subtitle A—Trade Promotion

Sec. 8101. Treatment of the Union of Soviet Socialist Republics under the Generalized System of Preferences.
Sec. 8102. Center for the Study of Trade in the Western Hemisphere.

Subtitle B—Customs and Trade Agency Authorizations and Reports; Competitiveness Policy Council

Part I—Authorizations and Reports

Sec. 8201. Customs and trade agency authorizations.
Sec. 8202. Customs forfeiture fund.
Sec. 8203. Repeal of East-West trade statistics monitoring system.
Sec. 8204. Customs personnel airport work shift regulation.
Sec. 8205. Reports on customs issues.

Part II—Competitiveness Policy Council

Sec. 8211. Competitiveness Policy Council Act Amendments.

Subtitle C—Customs Modernization

Sec. 8301. Short title; reference.

PART I—IMPROVEMENTS IN CUSTOMS ENFORCEMENT

Sec. 8311. Penalties for violations of arrival, reporting, entry, and clearance requirements.
Sec. 8312. Failure to declare.
Sec. 8313. Customs testing laboratories; detention of merchandise.
Sec. 8314. Recordkeeping.
Sec. 8315. Examination of books and witnesses.
Sec. 8316. Judicial enforcement.
Sec. 8317. Review of protests.
Sec. 8318. Repeal of provision relating to reliquidation on account of fraud.
Sec. 8319. Penalties relating to manifests.
Sec. 8320. Unlawful unlading or transshipment.
Sec. 8321. Penalties for fraud, gross negligence, and negligence; prior disclosure.
Sec. 8322. Penalties for false drawback claims.
Sec. 8323. Interpretive rulings and decisions; public information.
Sec. 8324. Seizure authority.

PART II—NATIONAL CUSTOMS AUTOMATION PROGRAM

Sec. 8331. National customs automation program.
Sec. 8332. Drawback and refunds.
Sec. 8333. Effective date of rates of duty.
Sec. 8334. Definitions.
Sec. 8335. Manifests.
Sec. 8336. Invoice contents.
Sec. 8337. Entry of merchandise.
Sec. 8338. Appraisement and other procedures.
Sec. 8339. Voluntary reliquidations.
Sec. 8340. Appraisement regulations.
Sec. 8341. Limitation on liquidation.
Sec. 8342. Payment of duties and fees.
Sec. 8343. Abandonment and damage.
Sec. 8344. Customs officer's immunity.
Sec. 8345. Protests.
Sec. 8346. Refunds and errors.
Sec. 8347. Bonds and other security.
Sec. 8348. Customhouse brokers.
Sec. 8349. Conforming amendments.

PART III—MISCELLANEOUS AMENDMENTS TO THE TARIFF ACT OF 1930

Sec. 8351. Report of arrival.
Sec. 8352. Entry of vessels.
Sec. 8353. Unlawful return of foreign vessel papers.
Sec. 8354. Vessels not required to enter.
Sec. 8355. Unlading.
Sec. 8356. Declarations.
Sec. 8357. General orders.
Sec. 8358. Unclaimed merchandise.
Sec. 8359. Destruction of merchandise.
Sec. 8360. Proceeds of sale.
Sec. 8361. Entry under regulations.
Sec. 8362. American trademarks.
Sec. 8363. Seizure.
Sec. 8364. Customs forfeiture fund.
Sec. 8365. Limitation on actions.
Sec. 8366. Collection of fees on behalf of other agencies.
Sec. 8367. Authority to settle claims.
Sec. 8368. Use of private collection agencies.

PART IV—MISCELLANEOUS PROVISIONS AND CONSEQUENTIAL AND CONFORMING AMENDMENTS TO OTHER LAWS

Sec. 8371. Amendments to the Harmonized Tariff Schedule.
Sec. 8372. Amendment to the Internal Revenue Code of 1986.
Sec. 8373. Amendments to title 28, United States Code.
Sec. 8374. Amendments to the revised Statutes of the United States.
Sec. 8375. Amendments to title 18, United States Code.
Sec. 8376. Amendment to the Act to Prevent Pollution From Ships.

Sec. 8377. Amendments to the Act of November 6, 1966.
Sec. 8378. Repeal of obsolete provisions of law.
Sec. 8379. Reports to Congress.
Sec. 8380. Applicability of amendments to entry or withdrawal of goods.

Subtitle D—Customs Officer Pay Reform

Sec. 8401. Overtime and premium pay for customs officers.
Sec. 8402. Foreign language proficiency awards for customs officers.
Sec. 8403. Appropriations reimbursements from the customs user fee account.
Sec. 8404. Treatment of certain pay of customs officers for retirement purposes.
Sec. 8405. Reports.

Subtitle E—Miscellaneous Trade Provisions

Sec. 8501. Review of the compliance by foreign countries with bilateral trade agreements.
Sec. 8502. Treatment of footwear.

TITLE IX—INCOME SECURITY AND HUMAN RESOURCE AMENDMENTS

Subtitle A—Amendments Relating to Old-Age, Survivors, and Disability Insurance Program

Sec. 9001. Improvement and clarification of provisions prohibiting misuse of symbols, emblems, or names in reference to social security programs and agencies.
Sec. 9002. Explicit requirements for maintenance of telephone access to local offices of the Social Security Administration.
Sec. 9003. Use of social security numbers by States and local governments for jury selection purposes.
Sec. 9004. Authorization for all States to extend coverage to State and local policemen and firemen under existing coverage agreements.
Sec. 9005. Limited exemption for Canadian ministers from certain self-employment tax liability.
Sec. 9006. Elimination of rounding distortion in the calculation of the old-age, survivors, and disability insurance contribution and benefit base and the earnings test exempt amounts.
Sec. 9007. Repeal of the facility-of-payment provision.
Sec. 9008. Authorization for disclosure by the Secretary of Health and Human Services of information for purposes of public or private epidemiological and similar research.
Sec. 9009. Comparable severity disability for children under disability insurance program.
Sec. 9010. Increased penalties for unauthorized disclosure of social security information.
Sec. 9011. Increase in authorized period for extension of time to file annual earnings report.
Sec. 9012. Amendments related to representative payees.
Sec. 9013. Technical corrections related to OASDI in the Omnibus Budget Reconciliation Act of 1990.
Sec. 9014. Availability and use of death information under the old-age, survivors, and disability insurance program.
Sec. 9015. Prohibition of misuse of Department of Treasury names, symbols, etc.

Subtitle B—Human Resources Provisions

Sec. 9101. Corrections related to the income security and human resources provisions of the Omnibus Budget Reconciliation Act of 1990.
Sec. 9102. Technical corrections related to the human resource and income security provisions of Omnibus Budget Reconciliation Act of 1989.
Sec. 9103. Elimination of obsolete provisions relating to treatment of the earned income tax credit.
Sec. 9104. Redesignation of certain provisions.

TITLE X—MEDICARE PROVISIONS

Sec. 10000. References in title.

Subtitle A—Provisions Relating to Part A

Sec. 10001. Transition for hospital outlier thresholds.

Sec. 10002. Essential access community hospital (EACH) amendments.
Sec. 10003. Wage index provisions.
Sec. 10004. Reauthorization of rural transition grant program.
Sec. 10005. Regional referral centers.
Sec. 10006. Medicare-dependent, small rural hospitals.
Sec. 10007. Hemophilia pass-through.
Sec. 10008. State hospital payment programs.
Sec. 10009. Psychology services in hospitals.
Sec. 10010. Graduate medical education provided in a hospital-owned community health center.
Sec. 10011. Uniformed services treatment facilities.
Sec. 10012. Requiring hospitals and nursing facilities to notify residents of availability of hospice benefit.
Sec. 10013. Skilled nursing facility wage index.
Sec. 10014. DRG payment window technical clarification and nursing home reform clerical error; miscellaneous and technical corrections.
Sec. 10015. Extension of rural hospital demonstration.

Subtitle B—Provisions Relating to Part B

Part I—Physicians' Services

Sec. 10101. Separate payment for interpretation of electrocardiograms.
Sec. 10102. Payments for new physicians and practitioners.
Sec. 10103. Basing payments for anesthesia services on actual time.
Sec. 10104. Geographic adjustment factors for medicare physicians' services.
Sec. 10105. Extra-billing limits.
Sec. 10106. Relative values for pediatric services.
Sec. 10107. Antigens under physician fee schedule.
Sec. 10108. Administration of claims relating to physicians' services.
Sec. 10109. Miscellaneous and technical corrections.

Part II—Ambulatory Surgical Services

Sec. 10111. Eye or eye and ear hospitals.
Sec. 10112. Extension of cap on payments for intraocular lenses.
Sec. 10113. Miscellaneous and technical corrections.

Part III—Durable Medical Equipment

Sec. 10121. Certification of suppliers.
Sec. 10122. Prohibition against carrier forum shopping.
Sec. 10123. Restrictions on certain marketing and sales activities.
Sec. 10124. Kickback clarification.
Sec. 10125. Beneficiary liability for noncovered services.
Sec. 10126. Adjustments for inherent reasonableness.
Sec. 10127. Payment for parenteral and enteral nutrients, supplies, and equipment during 1993.
Sec. 10128. Treatment of nebulizers and aspirators.
Sec. 10129. Payment for ostomy supplies, tracheostomy supplies, urologicals, and surgical dressings.
Sec. 10130. Payments for TENS devices.
Sec. 10131. Miscellaneous and technical corrections.

Part IV—Other Provisions

Sec. 10141. Payment for medically directed certified registered nurse anesthetist services.
Sec. 10142. Extension of Alzheimer's disease demonstration.
Sec. 10143. Part B late enrollment penalty.
Sec. 10144. Oral cancer drugs.
Sec. 10145. Speech-language pathologists and audiologists.
Sec. 10146. Extension of municipal health service demonstration projects.
Sec. 10147. Treatment of certain Indian health programs and facilities as Federally-qualified health centers.
Sec. 10148. Extension of influenza vaccination demonstration.
Sec. 10149. Miscellaneous and technical corrections.

Subtitle C—Provisions Relating to Parts A and B

Sec. 10201. Provisions relating to physician ownership and referral.

Sec. 10202. Direct graduate medical education.
Sec. 10203. End stage renal disease.
Sec. 10204. Medicare secondary payer.
Sec. 10205. Improved outreach for qualified medicare beneficiaries.
Sec. 10206. Social health maintenance organizations.
Sec. 10207. Peer review organizations.
Sec. 10208. Hospice information to home health beneficiaries.
Sec. 10209. Interest payments.
Sec. 10210. Clarification of judicial review rights.
Sec. 10211. Adjustments to discretionary spending limits.
Sec. 10212. Health maintenance organizations.
Sec. 10213. Treatment of certain State health care programs.
Sec. 10214. Miscellaneous and technical corrections.

Subtitle D—Provisions Relating to Medigap

Sec. 10301. Standards for medicare supplemental insurance policies.

TITLE XI—AUTHORIZATION FOR ADDITIONAL ASSISTANCE TO DISTRESSED COMMUNITIES

Subtitle A—National Public-Private Partnership Programs

Sec. 11001. National public-private partnership programs.

Subtitle B—Block Grant Funding for Eligible Programs

Sec. 11101. Authorization of appropriations.
Sec. 11102. Allocation of amounts among tax enterprise zones.
Sec. 11103. Use of amounts.
Sec. 11104. Eligible programs.
Sec. 11105. Application for funding.
Sec. 11106. Interagency Council.
Sec. 11107. Definitions.
Sec. 11108. Study and report.
Sec. 11109. Regulations.

Subtitle C—Other Programs

CHAPTER 1—COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Sec. 11201. Waiver of public services cap under community development block grant program.
Sec. 11202. Emergency community development loan guarantee authority.

CHAPTER 2—YOUNG ADULT EMPLOYMENT DEMONSTRATION PROGRAM

Sec. 11211. Establishment of young adult employment demonstration program.

CHAPTER 3—NATIONAL COMMUNITY ECONOMIC PARTNERSHIP

Sec. 11221. Short title; findings and purpose.

PART I—COMMUNITY ECONOMIC PARTNERSHIP INVESTMENT FUNDS

Sec. 11225. Purpose.
Sec. 11226. Provision of assistance.
Sec. 11227. Approval of applications.
Sec. 11228. Availability of lines of credit and use.
Sec. 11229. Limitations on use of funds.
Sec. 11230. Programs priority for special emphasis programs.

PART II—EMERGING COMMUNITY DEVELOPMENT CORPORATIONS

Sec. 11235. Community development corporation improvement grants.
Sec. 11236. Emerging community development corporation revolving loan funds.

PART III—RESEARCH AND DEMONSTRATION

Sec. 11241. Research and demonstration.

PART IV—MISCELLANEOUS PROVISIONS

Sec. 11245. Joint programs.
Sec. 11246. Reports.

Sec. 11247. Definitions.
Sec. 11248. Authorization of appropriations.
Sec. 11249. Prohibition.
Sec. 11250. Effective date.

CHAPTER 4—MISCELLANEOUS PROGRAMS

Sec. 11261. Establishment of enterprise capital access fund.
Sec. 11262. Hope for youth: Youthbuild.
Sec. 11263. Access of jobs/reverse commuting demonstration program.
Sec. 11264. Study of insurance availability in central cities and distressed urban areas.

TITLE XII—HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT

Sec. 12001. Short title.
Sec. 12002. Findings and policy.

Subtitle A—High Seas Large-Scale Driftnet Fishing

Sec. 12021. Denial of port privileges and sanctions for high seas large-scale driftnet fishing.
Sec. 12022. Duration of denial of port privileges and sanctions.
Sec. 12023. Requirements under Marine Mammal Protection Act of 1972.
Sec. 12024. Definitions.

Subtitle B—Fisheries Conservation Programs

Sec. 12031. Import restrictions under Fishermen's Protective Act of 1967.
Sec. 12032. Enforcement.
Sec. 12033. Trade negotiations and the environment.

Subtitle C—Fisheries Enforcement in Central Bering Sea

Sec. 12051. Short title.
Sec. 12052. Prohibition applicable to United States vessels and nationals.
Sec. 12053. Port privileges denial for fishing in central Bering Sea.
Sec. 12054. Duration of port privileges denial.
Sec. 12055. Restriction on fishing in United States exclusive economic zone.
Sec. 12056. Definitions.
Sec. 12057. Termination.

Subtitle D—Miscellaneous Provisions

Sec. 12071. Intermediary nations involved in export of certain tuna products.
Sec. 12072. Authority to extend reemployment rights.
Sec. 12073. Limitation on terms of voting members of regional fishery management councils.
Sec. 12074. Observer fee for North Pacific Fisheries Research Plan.

TITLE XIII—FEDERAL DEBT MANAGEMENT RESPONSIBILITY

Sec. 13001. Restriction and evaluation of borrowing authority of certain government-related corporations.

TITLE I—PROVISIONS RELATING TO DISTRESSED URBAN AND RURAL AREAS

Subtitle A—Urban Tax Enterprise Zones and Rural Development Investment Zones

SEC. 1101. STATEMENT OF PURPOSE.

It is the purpose of this subtitle to establish a demonstration program of providing incentives for the creation of tax enterprise zones in order—

(1) to revitalize economically and physically distressed areas, primarily by encouraging the formation of new businesses and the retention and expansion of existing businesses,

(2) to promote meaningful employment for tax enterprise zone residents, and

(3) to encourage individuals to reside in the tax enterprise zones in which they are employed.

PART I—DESIGNATION AND TAX INCENTIVES

SEC. 1102. DESIGNATION AND TREATMENT OF URBAN TAX ENTERPRISE ZONES AND RURAL DEVELOPMENT INVESTMENT ZONES.

(a) IN GENERAL.—Chapter 1 (relating to normal taxes and surtaxes) is amended by inserting after subchapter T the following new subchapter:

"Subchapter U—Designation and Treatment of Tax Enterprise Zones

"Part I. Designation of tax enterprise zones.
"Part II. Incentives for tax enterprise zones.

"PART I—DESIGNATION OF TAX ENTERPRISE ZONES

"Sec. 1391. Designation procedure.
"Sec. 1392. Eligibility and selection criteria.
"Sec. 1393. Definitions and special rules.

"SEC. 1391. DESIGNATION PROCEDURE.

"(a) IN GENERAL.—For purposes of this title, the term 'tax enterprise zone' means any area which is, under this part—

"(1) nominated by 1 or more local governments and the State in which it is located for designation as a tax enterprise zone, and

"(2) designated by—

"(A) the Secretary of Housing and Urban Development in the case of an urban tax enterprise zone, or

"(B) the Secretary of Agriculture, in consultation with the Secretary of Commerce, in the case of a rural development investment zone.

"(b) NUMBER OF DESIGNATIONS.—

"(1) AGGREGATE LIMIT.—The appropriate Secretaries may designate in the aggregate 50 nominated areas as tax enterprise zones under this section, subject to the availability of eligible nominated areas. Not more than 25 urban tax enterprise zones may be designated and not more than 25 rural development investment zones may be designated. Such designations may be made only during calendar years after 1991 and before 1997.

"(2) ANNUAL LIMITS.—

"(A) URBAN TAX ENTERPRISE ZONES.—The number of urban tax enterprise zones designated under paragraph (1)—

"(i) before 1994 shall not exceed 8,

"(ii) before 1995 shall not exceed 15, and

"(iii) before 1996 shall not exceed 21.

"(B) RURAL DEVELOPMENT INVESTMENT ZONES.—The number of rural development investment zones designated under paragraph (1)—

"(i) before 1994 shall not exceed 8,

"(ii) before 1995 shall not exceed 15, and

"(iii) before 1996 shall not exceed 21.

"(3) ADVANCE DESIGNATIONS PERMITTED.—For purposes of this subchapter, a designation during any calendar year shall be treated as made on January 1 of the following calendar year if the appropriate Secretary, in making such designation, specifies that such designation is effective as of such January 1.

"(c) LIMITATIONS ON DESIGNATIONS.—The appropriate Secretary may not make any designation under subsection (a) unless—

"(1) the local governments and the State in which the nominated area is located have the authority—

"(A) to nominate the area for designation as a tax enterprise zone, and

"(B) to provide assurances satisfactory to the appropriate Secretary that the commitments under section 1392(c) will be fulfilled,

"(2) a nomination of the area is submitted within a reasonable time before the calendar year for which designation as a tax enterprise zone is sought (or, if later, a reasonable time after the date of the enactment of this subchapter),

"(3) the appropriate Secretary determines that any information furnished is reasonably accurate, and

"(4) the State and local governments certify that no portion of the area nominated is already included in a tax enterprise zone or in an area otherwise nominated to be a tax enterprise zone.

"(d) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—

"(1) IN GENERAL.—Any designation of an area as a tax enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

"(A) December 31 of the 15th calendar year following the calendar year in which such date occurs,

"(B) the termination date designated by the State and local governments as provided for in their nomination, or

"(C) the date the appropriate Secretary revokes the designation under paragraph (2).

"(2) REVOCATION OF DESIGNATION.—

"(A) IN GENERAL.—The appropriate Secretary shall revoke the designation of an area as a tax enterprise zone if such Secretary determines that the local government or the State in which it is located—

"(i) has modified the boundaries of the area, or

"(ii) is not complying substantially with the State and local commitments pursuant to section 1392(c).

"(B) APPLICABLE PROCEDURES.—A designation may be revoked by the appropriate Secretary under subparagraph (A) only after a hearing on the record involving officials of the State or local government involved.

"SEC. 1392. ELIGIBILITY AND SELECTION CRITERIA.

"(a) IN GENERAL.—The appropriate Secretary may make a designation of any nominated area under section 1391 only on the basis of the eligibility and selection criteria set forth in this section.

"(b) ELIGIBILITY CRITERIA.—

"(1) URBAN TAX ENTERPRISE ZONES.—A nominated area which is not a rural area shall be eligible for designation under section 1391 only if it meets the following criteria:

"(A) POPULATION.—The nominated area has a population (as determined by the most recent census data available) of not less than 4,000.

"(B) DISTRESS.—The nominated area is one of pervasive poverty, unemployment, and general distress.

"(C) SIZE.—The nominated area—

"(i) does not exceed 20 square miles,

"(ii) has a boundary which is continuous, or consists of not more than 3 noncontiguous parcels within the same metropolitan area,

"(iii) is located entirely within 1 State, and

"(iv) does not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade).

"(D) UNEMPLOYMENT RATE.—The unemployment rate (as determined by the appropriate available data) is not less than 1.5 times the national unemployment rate.

"(E) POVERTY RATE.—The poverty rate (as determined by the most recent census data available) for not less than 90 percent of the population census tracts (or where not tracted, the equivalent county divisions as defined by the Bureau of the Census for the purposes of defining poverty areas) within the nominated area is not less than 20 percent.

"(F) COURSE OF ACTION.—There has been adopted for the nominated area a course of action which meets the requirements of subsection (c).

"(2) RURAL DEVELOPMENT INVESTMENT ZONES.—A nominated area which is a rural area shall be eligible for designation under section 1391 only if it meets the following criteria:

"(A) POPULATION.—The nominated area has a population (as determined by the most recent census data available) of not less than 1,000.

"(B) DISTRESS.—The nominated area is one of general distress.

"(C) SIZE.—The nominated area—

"(i) does not exceed 10,000 square miles,

"(ii) consists of areas within not more than 4 contiguous counties,

"(iii) has a boundary which is continuous, or consists of not more than 3 noncontiguous parcels, and

"(iv) is located entirely within 1 State.

"(D) ADDITIONAL CRITERIA.—Not less than 2 of the following criteria:

"(i) UNEMPLOYMENT RATE.—The criterion set forth in paragraph (1)(D).

"(ii) POVERTY RATE.—The criterion set forth in paragraph (1)(E).

"(iii) JOB LOSS.—The amount of wages attributable to employment in the area, and subject to tax under section 3301 during the preceding calendar year, is not more than 95 percent of such wages during the 5th preceding calendar year.

"(iv) OUT-MIGRATION.—The population of the area decreased (as determined by the most recent census data available) by 10 percent or more between 1980 and 1990.

"(E) COURSE OF ACTION.—There has been adopted for the nominated area a course of action which meets the requirements of subsection (c).

"(3) AREAS WITHIN INDIAN RESERVATIONS INELIGIBLE.—A nominated area shall not be eligible for designation under section 1391 if any portion of such area is within an Indian reservation.

"(c) REQUIRED STATE AND LOCAL COURSE OF ACTION.—

"(1) IN GENERAL.—No nominated area may be designated as a tax enterprise zone unless the local government and the State in which it is located agree in writing that, during any period during which the area is a tax enterprise zone, the governments will follow a specified course of action designed to reduce the various burdens borne by employers or employees in the area.

"(2) COURSE OF ACTION.—The course of action under paragraph (1) may be implemented by both governments and private nongovernmental entities, may not be funded from proceeds of any Federal program (other than discretionary proceeds), and may include—

"(A) a certification by the State insurance commissioner (or similar State official) that basic commercial property insurance of a type comparable to that insurance generally in force in urban or rural areas, whichever is applicable, throughout the State is available to businesses within the tax enterprise zone,

"(B) a reduction of tax rates or fees applying within the tax enterprise zone,

"(C) an increase in the level, or efficiency of delivery, of local public services within the tax enterprise zone,

"(D) actions to reduce, remove, simplify, or streamline government paperwork requirements applicable within the tax enterprise zone,

"(E) the involvement in the program by public authorities or private entities, organizations, neighborhood associations, and community groups, particularly those within the nominated area, including a written commitment to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents of the nominated area,

"(F) the giving of special preference to contractors owned and operated by members of any socially and economically disadvantaged group (within the meaning of section 8(a) of the Small Business Act (15 U.S.C. 637(a)),

"(G) the gift (or sale at below fair market value) of surplus land in the tax enterprise zone to neighborhood organizations agreeing to operate a business on the land,

"(H) the establishment of a program under which employers within the tax enterprise zone may purchase health insurance for their employees on a pooled basis,

"(I) the establishment of a program to encourage local financial institutions to satisfy their obligations under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) by making loans to enterprise zone businesses, with emphasis on startup and other small-business concerns (as defined in section 3(a) of the Small Business Act (15 U.S.C. 632(a)),

"(J) the giving of special preference to qualified low-income housing projects located in tax enterprise zones, in the allocation of the State housing credit ceiling applicable under section 42, and

"(K) the giving of special preference to facilities located in tax enterprise zones, in the allocation of the State ceiling on private activity bonds applicable under section 146.

"(3) RECOGNITION OF PAST EFFORTS.—In evaluating courses of action agreed to by any State or local government, the appropriate Secretary shall take into account the past efforts of the State or local government in reducing the various burdens borne by employers and employees in the area involved.

"(4) PROHIBITION OF ASSISTANCE FOR BUSINESS RELOCATIONS.—

"(A) IN GENERAL.—The course of action implemented under paragraph (1) may not include any action to assist any establishment in relocating from 1 area to another area.

"(B) EXCEPTION.—The limitation established in subparagraph (A) shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary if—

"(i) the establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operations, and

"(ii) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

"(d) SELECTION CRITERIA.—From among the nominated areas eligible for designation under subsection (b) by the appropriate Secretary, such appropriate Secretary shall make designations of tax enterprise zones on the basis of the following factors (each of which is to be given equal weight):

"(1) STATE AND LOCAL COMMITMENTS.—The strength and quality of the commitments which have been promised as part

of the course of action relative to the fiscal ability of the nominating State and local governments.

"(2) IMPLEMENTATION OF COURSE OF ACTION.—The effectiveness and enforceability of the guarantees that the course of action will actually be carried out, including the specificity with which the commitments under paragraph (1) are described in order that the applicable Secretary will be better able to determine annually under section 1391(d)(2)(A)(ii) whether the commitments are being carried out.

"(3) PRIVATE COMMITMENTS.—The level of commitments by private entities of additional resources and contributions to the economy of the nominated area, including the creation of new or expanded business activities.

"(4) AVERAGE RANKINGS.—The average ranking with respect to—

"(A) the criteria set forth in subparagraphs (D) and (E) of subsection (b)(1), in the case of an area which is not a rural area, or

"(B) the 2 criteria set forth in subsection (b)(2)(D) that give the area a higher average ranking, in the case of a rural area.

"(5) REVITALIZATION POTENTIAL.—The potential for the revitalization of the nominated area as a result of zone designation, taking into account particularly the number of jobs to be created and retained.

"SEC. 1393. DEFINITIONS AND SPECIAL RULES.

For purposes of this subchapter—

"(1) URBAN TAX ENTERPRISE ZONE.—The term 'urban tax enterprise zone' means a tax enterprise zone which meets the requirements of section 1392(b)(1).

"(2) RURAL DEVELOPMENT INVESTMENT ZONE.—The term 'rural development investment zone' means a tax enterprise zone which meets the requirements of section 1392(b)(2).

"(3) GOVERNMENTS.—If more than 1 local government seeks to nominate an area as a tax enterprise zone, any reference to, or requirement of, this subchapter shall apply to all such governments.

"(4) LOCAL GOVERNMENT.—The term 'local government' means—

"(A) any county, city, town, township, parish, village, or other general purpose political subdivision of a State, and

"(B) any combination of political subdivisions described in subparagraph (A) recognized by the appropriate Secretary.

"(5) NOMINATED AREA.—The term 'nominated area' means an area which is nominated by 1 or more local governments and the State in which it is located for designation as a tax enterprise zone under this subchapter.

"(6) RURAL AREA.—The term 'rural area' means any area which is—

"(A) outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

"(B) determined by the Secretary of Agriculture, after consultation with the Secretary of Commerce, to be a rural area.

"(7) APPROPRIATE SECRETARY.—The term 'appropriate Secretary' means—

"(A) the Secretary of Housing and Urban Development in the case of urban tax enterprise zones, and

"(B) the Secretary of Agriculture in the case of rural development investment zones.

"(8) STATE-CHARTERED DEVELOPMENT CORPORATIONS.—An area shall be treated as nominated by a State and a local government if it is nominated by an economic development corporation chartered by the State.

"PART II—INCENTIVES FOR TAX ENTERPRISE ZONES

"SUBPART A. Enterprise zone employment credit.
"SUBPART B. Investment incentives.
"SUBPART C. Regulations.

"Subpart A—Enterprise Zone Employment Credit

"Sec. 1394. Enterprise zone employment credit.
"Sec. 1395. Other definitions and special rules.

"SEC. 1394. ENTERPRISE ZONE EMPLOYMENT CREDIT.

"(a) AMOUNT OF CREDIT.—For purposes of section 38, the amount of the enterprise zone employment credit determined under this section with respect to any employer for any taxable year is 15 percent of the qualified zone wages paid or incurred during such taxable year.

"(b) QUALIFIED ZONE WAGES.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified zone wages' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified zone employee.

"(2) ONLY FIRST $20,000 OF WAGES PER YEAR TAKEN INTO ACCOUNT.—With respect to each qualified zone employee, the amount of qualified zone wages which may be taken into account for the taxable year shall not exceed $20,000.

"(3) COORDINATION WITH TARGETED JOBS CREDIT.—The term 'qualified zone wages' shall not include wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51.

"(c) QUALIFIED ZONE EMPLOYEE.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualified zone employee' means, with respect to any period, any employee of an employer if—

"(A) substantially all of the services performed during such period by such employee for such employer are per-

formed within a tax enterprise zone in a trade or business of the employer, and

"(B) the principal place of abode of such employee while performing such services is within such tax enterprise zone.

"(2) CERTAIN INDIVIDUALS NOT ELIGIBLE.—The term 'qualified zone employee' shall not include—

"(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

"(B) any 5-percent owner (as defined in section 416(i)(1)(B)),

"(C) any individual employed by the employer at any facility described in section 144(c)(6)(B), and

"(D) any individual employed by the employer in a trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the taxable year, the sum of—

"(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the employer which are used in such a trade or business, and

"(ii) the aggregate value of assets leased by the employer which are used in such a trade or business (as determined under regulations prescribed by the Secretary),

exceeds $500,000.

"(d) EARLY TERMINATION OF EMPLOYMENT BY EMPLOYER.—

"(1) IN GENERAL.—If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer—

"(A) no wages with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

"(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages taken into account with respect to such employee.

"(2) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

"(3) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to—

"(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

"(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

"(iii) a termination of employment of an individual if it is determined under the applicable State un-

employment compensation law that the termination was due to the misconduct of such individual.

"(B) CHANGES IN FORM OF BUSINESS.—For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

"(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

"(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

"(4) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of—

"(A) determining the amount of any credit allowable under this chapter, and

"(B) determining the amount of the tax imposed by section 55.

"SEC. 1395. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) WAGES.—For purposes of this subpart, the term 'wages' has the same meaning as when used in section 51.

"(b) CONTROLLED GROUPS.—For purposes of this subpart—

"(1) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer for purposes of this subpart, and

"(2) the credit (if any) determined under section 1394 with respect to each such employer shall be its proportionate share of the wages giving rise to such credit.

"(c) CERTAIN OTHER RULES MADE APPLICABLE.—For purposes of this subpart, rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

"(d) NOTICE OF AVAILABILITY OF ADVANCE PAYMENT OF EARNED INCOME CREDIT.—Each employer shall take reasonable steps to notify all qualified zone employees of the availability to eligible individuals of receiving advanced payments of the credit under section 32 (relating to the earned income credit).

"Subpart B—Investment Incentives

"Sec. 1396. Deduction for purchase of enterprise zone stock.
"Sec. 1397. 50 percent exclusion for gain from new zone investments.
"Sec. 1397A. Nonrecognition of gain from new zone investments.
"Sec. 1397B. Other incentives.
"Sec. 1397C. Enterprise zone business defined.

"SEC. 1396. DEDUCTION FOR PURCHASE OF ENTERPRISE ZONE STOCK.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a deduction an amount equal to 50 percent of the aggregate amount paid in cash by the taxpayer during the taxable year for the purchase of enterprise zone stock.

"(b) LIMITATION.—

"(1) In general.—The maximum amount allowed as a deduction under subsection (a) to a taxpayer for the taxable year shall not exceed the lesser of—

"(A) $25,000, or

"(B) the excess of $250,000 over the amount allowed as a deduction under this section to the taxpayer for all prior taxable years.

"(2) Excess amounts.—If the amount otherwise deductible by any person under subsection (a) exceeds the limitation under paragraph (1)(A)—

"(A) the amount of such excess shall be treated as an amount paid to which subsection (a) applies during the next taxable year, and

"(B) the deduction allowed for any taxable year shall be allocated proportionately among the enterprise zone stock purchased by such person on the basis of the respective purchase prices per share.

"(3) Aggregation with family members.—The taxpayer and members of the taxpayer's family shall be treated as one person for purposes of paragraph (1), and the limitations contained in such paragraph shall be allocated among the taxpayer and such members in accordance with their respective purchases of enterprise zone stock. For purposes of this paragraph, an individual's family includes only such individual's spouse and minor children.

"(c) Enterprise Zone Stock.—For purposes of this section—

"(1) In general.—The term 'enterprise zone stock' means stock of a corporation if—

"(A) such stock is acquired on original issue from the corporation, and

"(B) such corporation is, at the time of issue, a qualified enterprise zone issuer.

"(2) Proceeds must be invested in qualified enterprise zone property.—

"(A) In general.—Such term shall include such stock only to the extent that the proceeds of such issuance are used by such issuer during the 12-month period beginning on the date of issuance to purchase (as defined in section 179(d)(2)) qualified enterprise zone property.

"(B) Qualified enterprise zone property.—For purposes of this section, the term 'qualified enterprise zone property' means property to which section 168 applies—

"(i) the original use of which in a tax enterprise zone commences with the issuer, and

"(ii) substantially all of the use of which is in a tax enterprise zone.

"(3) Redemptions.—The term 'enterprise zone stock' shall not include any stock acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of this section.

"(d) Qualified Enterprise Zone Issuer.—For purposes of this section, the term 'qualified enterprise zone issuer' means any domestic C corporation if—

"(1) such corporation is an enterprise zone business or, in the case of a new corporation, such corporation is being organized for purposes of being an enterprise zone business,

"(2) such corporation does not have more than one class of stock,

"(3) the sum of—

"(A) the money,

"(B) the aggregate unadjusted bases of property owned by such corporation, and

"(C) the value of property leased to the corporation (as determined under regulations prescribed by the Secretary),

does not exceed $5,000,000, and

"(4) more than 20 percent of the total voting power, and 20 percent of the total value, of the stock of such corporation is owned directly by individuals or estates or indirectly by individuals through partnerships or trusts.

The determination under paragraph (3) shall be made as of the time of issuance of the stock in question but shall include amounts received for such stock.

"(e) DISPOSITIONS OF STOCK.—

"(1) BASIS REDUCTION.—For purposes of this title, the basis of any enterprise zone stock shall be reduced by the amount of the deduction allowed under this section with respect to such stock.

"(2) DEDUCTION RECAPTURED AS ORDINARY INCOME.—For purposes of section 1245—

"(A) any stock the basis of which is reduced under paragraph (1) (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) shall be treated as section 1245 property, and

"(B) any reduction under paragraph (1) shall be treated as a deduction allowed for depreciation.

If an exchange of any stock described in paragraph (1) qualifies under section 354(a), 355(a), or 356(a), the amount of gain recognized under section 1245 by reason of this paragraph shall not exceed the amount of gain recognized in the exchange (determined without regard to this paragraph).

"(3) CERTAIN EVENTS TREATED AS DISPOSITIONS.—For purposes of determining the amount treated as ordinary income under section 1245 by reason of paragraph (2), paragraph (3) of section 1245(b) (relating to certain tax-free transactions) shall not apply.

"(4) INTEREST CHARGED IF DISPOSITION WITHIN 5 YEARS OF PURCHASE.—

"(A) IN GENERAL.—If—

"(i) a taxpayer disposes of any enterprise zone stock with respect to which a deduction was allowed under subsection (a) (or any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) before the end of the 5-year period beginning on the date such stock was purchased by the taxpayer, and

"(ii) section 1245(a) applies to such disposition by reason of paragraph (2),

then the tax imposed by this chapter for the taxable year in which such disposition occurs shall be increased by the amount determined under subparagraph (B).

"(B) ADDITIONAL AMOUNT.—For purposes of subparagraph (A), the additional amount shall be equal to the amount of interest (determined at the rate applicable under section 6621(a)(2)) that would accrue—

"(i) during the period beginning on the date the stock was purchased by the taxpayer and ending on the date of such disposition by the taxpayer,

"(ii) on an amount equal to the aggregate decrease in tax of the taxpayer resulting from the deduction allowed under this subsection (a) with respect to such stock.

"(C) SPECIAL RULE.—Any increase in tax under subparagraph (A) shall not be treated as a tax imposed by this chapter for purposes of—

"(i) determining the amount of any credit allowable under this chapter, and

"(ii) determining the amount of the tax imposed by section 55.

"(f) DISQUALIFICATION.—

"(1) ISSUER CEASES TO QUALIFY.—If, during the 10-year period beginning on the date enterprise zone stock was purchased by the taxpayer, the issuer of such stock ceases to be a qualified enterprise zone issuer (determined without regard to subsection (d)(3)), then notwithstanding any provision of this subtitle other than paragraph (2), the taxpayer shall be treated for purposes of subsection (e) as disposing of such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) during the taxable year during which such cessation occurs at its fair market value as of the 1st day of such taxable year.

"(2) CESSATION OF ENTERPRISE ZONE STATUS NOT TO CAUSE RECAPTURE.—A corporation shall not fail to be treated as a qualified enterprise zone issuer for purposes of paragraph (1) solely by reason of the termination or revocation of a tax enterprise zone designation.

"(g) OTHER SPECIAL RULES.—

"(1) APPLICATION OF LIMITS TO PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or an S corporation, the limitations under subsection (b) shall apply at the partner and shareholder level and shall not apply at the partnership or corporation level.

"(2) DEDUCTION NOT ALLOWED TO ESTATES AND TRUSTS.—Estates and trusts shall not be treated as individuals for purposes of this section.

"SEC. 1397. 50 PERCENT EXCLUSION FOR GAIN FROM NEW ZONE INVESTMENTS.

"(a) GENERAL RULE.—In the case of an individual, gross income shall not include 50 percent of any qualified capital gain recognized

on the sale or exchange of a qualified zone asset held for more than 5 years.

"(b) QUALIFIED ZONE ASSET.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified zone asset' means—

"(A) any qualified zone stock,

"(B) any qualified zone business property, and

"(C) any qualified zone partnership interest.

"(2) QUALIFIED ZONE STOCK.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'qualified zone stock' means any stock in a domestic corporation if—

"(i) such stock is acquired by the taxpayer on original issue from the corporation solely in exchange for cash,

"(ii) as of the time such stock was issued, such corporation was an enterprise zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being an enterprise zone business), and

"(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as an enterprise zone business.

"(B) EXCLUSION OF STOCK FOR WHICH DEDUCTION UNDER SECTION 1396 ALLOWED.—The term 'qualified zone stock' shall not include any stock the basis of which is reduced under section 1396(e)(1).

"(C) REDEMPTIONS.—The term 'qualified zone stock' shall not include any stock acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of this section.

"(3) QUALIFIED ZONE BUSINESS PROPERTY.—

"(A) IN GENERAL.—The term 'qualified zone business property' means tangible property if—

"(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the tax enterprise zone took effect,

"(ii) the original use of such property in a tax enterprise zone commences with the taxpayer, and

"(iii) during substantially all of the taxpayer's holding period for such property, substantially all of the use of such property was in a tax enterprise zone and in an enterprise zone business of the taxpayer.

"(B) SPECIAL RULE FOR SUBSTANTIAL IMPROVEMENTS.—The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as satisfied with respect to—

"(i) property which is substantially improved by the taxpayer, and

"(ii) any land on which such property is located.

For purposes of the preceding sentence, property shall be treated as substantially improved by the taxpayer if, during any 24-month period beginning after the date on which the designation of the tax enterprise zone took effect, additions

to basis with respect to such property in the hands of the taxpayer exceed the greater of (i) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (ii) $5,000.

"(C) LIMITATION ON LAND.—The term 'qualified zone business property' shall not include land which is not an integral part of a qualified business (as defined in section 1397C(c)).

"(4) QUALIFIED ZONE PARTNERSHIP INTEREST.—The term 'qualified zone partnership interest' means any interest in a partnership if—

"(A) such interest is acquired by the taxpayer from the partnership solely in exchange for cash,

"(B) as of the time such interest was acquired, such partnership was an enterprise zone business (or, in the case of a new partnership, such partnership was being organized for purposes of being an enterprise zone business), and

"(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as an enterprise zone business.

A rule similar to the rule of paragraph (2)(C) shall apply for purposes of this paragraph.

"(5) TREATMENT OF SUBSEQUENT PURCHASERS.—The term 'qualified zone asset' includes any property which would be a qualified zone asset but for paragraph (2)(A)(i), (3)(A)(ii), or (4)(A) in the hands of the taxpayer if such property was a qualified zone asset in the hands of any prior holder.

"(6) 10-YEAR SAFE HARBOR.—If any property ceases to be a qualified zone asset by reason of paragraph (2)(A)(iii), (3)(A)(iii), or (4)(C) after the 10-year period beginning on the date the taxpayer acquired such property, such property shall continue to be treated as meeting the requirements of such paragraph; except that the amount of gain to which subsection (a) applies on any sale or exchange of such property shall not exceed the amount which would be qualified capital gain had such property been sold on the date of such cessation.

"(7) TREATMENT OF ZONE TERMINATIONS.—The termination of any designation of an area as a tax enterprise zone shall be disregarded for purposes of determining whether any property is a qualified zone asset.

"(c) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED CAPITAL GAIN.—Except as otherwise provided in this subsection, the term 'qualified capital gain' means any long-term capital gain.

"(2) CERTAIN GAIN ON REAL PROPERTY NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain which would be treated as ordinary income under section 1250 if section 1250 applied to all depreciation rather than the additional depreciation.

"(3) GAIN ATTRIBUTABLE TO PERIODS AFTER TERMINATION OF ZONE DESIGNATION NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain attributable to periods

after the termination of any designation of an area as a tax enterprise zone.

"(d) TREATMENT OF PASS-THRU ENTITIES.—

"(1) SALES AND EXCHANGES.—Gain on the sale or exchange of an interest in a pass-thru entity held by the taxpayer (other than an interest in an entity which was an enterprise zone business during substantially all of the period the taxpayer held such interest) for more than 5 years shall be treated as gain described in subsection (a) to the extent such gain is attributable to amounts which would be qualified capital gain on qualified zone assets (determined as if such assets had been sold on the date of the sale or exchange) held by such entity for more than 5 years and throughout the period the taxpayer held such interest. A rule similar to the rule of paragraph (2)(C) shall apply for purposes of the preceding sentence.

"(2) INCOME INCLUSIONS.—

"(A) IN GENERAL.—Any amount included in income by reason of holding an interest in a pass-thru entity (other than an entity which was an enterprise zone business during substantially all of the period the taxpayer held the interest to which such inclusion relates) shall be treated as gain described in subsection (a) if such amount meets the requirements of subparagraph (B).

"(B) REQUIREMENTS.—An amount meets the requirements of this subparagraph if—

"(i) such amount is attributable to qualified capital gain recognized on the sale or exchange by the pass-thru entity of property which is a qualified zone asset in the hands of such entity and which was held by such entity for the period required under subsection (a), and

"(ii) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which was held by the taxpayer on the date on which such pass-thru entity acquired such asset and at all times thereafter before the disposition of such asset by such pass-thru entity.

"(C) LIMITATION BASED ON INTEREST ORIGINALLY HELD BY TAXPAYER.—Subparagraph (A) shall not apply to any amount to the extent such amount exceeds the amount to which subparagraph (A) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified zone asset was acquired.

"(3) PASS-THRU ENTITY.—For purposes of this subsection, the term 'pass-thru entity' means—

"(A) any partnership,

"(B) any S corporation,

"(C) any regulated investment company, and

"(D) any common trust fund.

"(e) SALES AND EXCHANGES OF INTERESTS IN PARTNERSHIPS AND S CORPORATIONS WHICH ARE QUALIFIED ZONE BUSINESSES.—In the case of the sale or exchange of an interest in a partnership, or of stock in an S corporation, which was an enterprise zone business

during substantially all of the period the taxpayer held such interest or stock, the amount of qualified capital gain shall be determined without regard to—

"(1) any intangible, and any land, which is not an integral part of any qualified business (as defined in section 1397C(b)), and

"(2) gain attributable to periods before the designation of an area as a tax enterprize zone.

"(f) CERTAIN TAX-FREE AND OTHER TRANSFERS.—For purposes of this section—

"(1) IN GENERAL.—In the case of a transfer of a qualified zone asset to which this subsection applies, the transferee shall be treated as—

"(A) having acquired such asset in the same manner as the transferor, and

"(B) having held such asset during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

"(2) TRANSFERS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any transfer—

"(A) by gift,

"(B) at death, or

"(C) from a partnership to a partner thereof of a qualified zone asset with respect to which the requirements of subsection (d)(2) are met at the time of the transfer (without regard to the 5-year holding requirement).

"(3) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

"(g) CERTAIN BUSINESSES TREATED AS NOT QUALIFIED BUSINESSES.—For purposes of this section and section 1397A, the term 'enterprise zone business' has the meaning given such term by section 1397C except that, in applying section 1397C for such purposes, the term 'qualified business' shall not include any trade or business of producing property of a character subject to the allowance for depletion under section 611.

"SEC. 1397A. NONRECOGNITION OF GAIN FROM NEW ZONE INVESTMENTS.

"(a) GENERAL RULE.—At the election of an individual, qualified capital gain (within the meaning of section 1397) from the sale or exchange of a qualified zone asset shall be recognized only to the extent that—

"(1) the amount realized from such sale or exchange, exceeds

"(2) the cost (not heretofore taken into account under this subsection) of any qualified zone asset purchased directly by the taxpayer during the reinvestment period.

"(b) QUALIFIED ZONE ASSET.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified zone asset' has the meaning given such term by section 1397.

"(2) TIME FOR TESTING.—

"(A) SALES.—In the case of a sale or exchange of property, the determination of whether such property is a quali-

fied zone asset shall be made as of the time of the sale or exchange.

"(B) PURCHASES.—In the case of a purchase of property, the determination of whether such property is a qualified zone asset shall be made as of the time of such purchase.

"(c) OTHER DEFINITIONS.—For purposes of this section—

"(1) REINVESTMENT PERIOD.—The term 'reinvestment period' means, with respect to any sale or exchange, the 6-month period beginning on the date of such sale or exchange.

"(2) PURCHASE.—The term 'purchase' has the meaning given to such term by section 179(d)(2).

"(d) BUSINESS OR PROPERTY CEASES TO QUALIFY.—

"(1) IN GENERAL.—If, during the 10-year period beginning on the date any qualified zone replacement asset was purchased by the taxpayer, such asset ceases to be a qualified zone asset, notwithstanding any provision of this subtitle other than paragraph (3), the taxpayer shall be treated as disposing of such asset during the taxable year during which such cessation occurs at its fair market value as of the 1st day of such taxable year.

"(2) LIMITATION ON GAIN RECOGNIZED.—The amount of gain recognized pursuant to paragraph (1) with respect to any asset shall not exceed the lesser of—

"(A) the amount of gain which was not recognized under subsection (a) by the reason of the purchase of such asset, or

"(B) the excess of the fair market value referred to in paragraph (1) over the adjusted basis of such asset.

"(3) CESSATION OF ENTERPRISE ZONE STATUS NOT TO CAUSE RECAPTURE.—An asset shall not fail to be treated as a qualified zone asset for purposes of paragraph (1) solely by reason of the termination of a tax enterprise zone designation.

"(4) QUALIFIED ZONE REPLACEMENT ASSET.—For purposes of paragraph (1), the term 'qualified zone replacement asset' means any qualified zone asset the purchase of which resulted in the nonrecognition of gain under subsection (a) with respect to any other property.

"(e) BASIS OF QUALIFIED ZONE REPLACEMENT ASSET.—If gain from the sale or exchange of any property is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis of any qualified zone replacement asset (as defined in subsection (d)(4)) purchased during the reinvestment period.

"(f) COORDINATION WITH INSTALLMENT METHOD REPORTING.—This section shall not apply to any gain from any installment sale (as defined in section 453(b)) if section 453(a) applies to such sale.

"(g) STATUTE OF LIMITATIONS.—If any gain is realized by the taxpayer on any sale or exchange to which an election under this section applies, then—

"(1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

"(A) the taxpayer's cost of purchasing any qualified zone replacement asset,

"(B) the taxpayer's intention not to purchase qualified zone replacement asset within the reinvestment period, or

"(C) a failure to make such purchase within the reinvestment period, and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any law or rule of law which would otherwise prevent such assessment.

"SEC. 1397B. ADDITIONAL INCENTIVES.

"(a) INCREASE IN EXPENSING UNDER SECTION 179.—In the case of an enterprise zone business, section 179(b)(1) shall be applied by substituting '$20,000' for '$10,000'.

"(b) ORDINARY LOSS TREATMENT FOR CERTAIN PROPERTY.—

"(1) IN GENERAL.—Loss on any qualified zone asset (as defined in section 1397(b)) held for more than 2 years (5 years in the case of real property) shall be treated as an ordinary loss.

"(2) REAL PROPERTY.—For purposes of paragraph (1), the term 'real property' means any property which is section 1250 property (as defined in section 1250(c)).

"(3) SPECIAL RULES.—

"(A) CERTAIN RULES MADE APPLICABLE.—For purposes of this subsection, rules similar to the following rules shall apply:

"(i) Paragraphs (1), (2), and (3) of section 1244(d).

"(ii) Subsections (b)(6), (c)(3), (d), (e), and (f) of section 1397.

"(B) COORDINATION WITH SECTION 1231.—Losses treated as ordinary losses by reason of this subsection shall not be taken into account in applying section 1231.

"SEC. 1397C. ENTERPRISE ZONE BUSINESS DEFINED.

"(a) IN GENERAL.—For purposes of this subpart, the term 'enterprise zone business' means—

"(1) any qualified business entity, and

"(2) any qualified proprietorship.

"(b) QUALIFIED BUSINESS ENTITY.—For purposes of this section, the term 'qualified business entity' means, with respect to any taxable year, any corporation or partnership if for such year—

"(1)(A) every trade or business of such entity is the active conduct of a qualified business within a tax enterprise zone, and

"(B) at least 80 percent of the total gross income of such entity is derived from the active conduct of such business,

"(2) substantially all of the use of the tangible property of such entity (whether owned or leased) is within a tax enterprise zone,

"(3) substantially all of the intangible property of such entity is used in, and exclusively related to, the active conduct of any such business,

"(4) substantially all of the services performed for such entity by its employees are performed in a tax enterprise zone,

"(5) at least ⅓ of its employees are residents of a tax enterprise zone,

"(6) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

"(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property.

"(c) QUALIFIED PROPRIETORSHIP.—For purposes of this section, the term 'qualified proprietorship' means, with respect to any taxable year, any qualified business carried on by an individual as a proprietorship if for such year—

"(1) at least 80 percent of the total gross income of such individual from such business is derived from the active conduct of such business in a tax enterprise zone,

"(2) substantially all of the use of the tangible property of such individual in such business (whether owned or leased) is within a tax enterprise zone,

"(3) substantially all of the intangible property of such business is used in, and exclusively related to, the active conduct of such business,

"(4) substantially all of the services performed for such individual in such business by employees of such business are performed in a tax enterprise zone,

"(5) at least ⅓ of such employees are residents of a tax enterprise zone,

"(6) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of such business, and

"(7) less than 5 percent of the average of the aggregate unadjusted bases of the property of such individual which is used in such business is attributable to nonqualified financial property.

For purposes of this subsection, the term 'employee' includes the proprietor.

"(d) QUALIFIED BUSINESS.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualified business' means any trade or business.

"(2) RENTAL OF REAL PROPERTY.—The rental to others of real property located in a tax enterprise zone shall be treated as a qualified business if and only if—

"(A) in the case of real property which is not residential rental property (as defined in section 168(e)(2)), the lessee is an enterprise zone business, or

"(B) in the case of residential rental property (as so defined)—

"(i) such property was originally placed in service after the date the tax enterprise zone was designated, or

"(ii) such property is rehabilitated after such date in a rehabilitation which meets requirements based on the principles of section 42(e)(3).

"(3) RENTAL OF TANGIBLE PERSONAL PROPERTY.—The rental to others of tangible personal property shall be treated as a qualified business if and only if substantially all of the rental of such property is by enterprise zone businesses or by residents of a tax enterprise zone.

"(4) TREATMENT OF BUSINESS HOLDING INTANGIBLES.—The term 'qualified business' shall not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

"(5) CERTAIN BUSINESSES EXCLUDED.—The term 'qualified business' shall not include—

"(A) any trade or business consisting of the operation of any facility described in section 144(c)(6)(B), and

"(B) any trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of—

"(i) the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer which are used in such a trade or business, and

"(ii) the aggregate value of assets leased by the taxpayer which are used in such a trade or business,

exceeds $500,000.

For purposes of subparagraph (B), rules similar to the rules of section 1395(b) shall apply.

"(e) NONQUALIFIED FINANCIAL PROPERTY.—For purposes of this section, the term 'nonqualified financial property' means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in regulations; except that such term shall not include—

"(1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less, or

"(2) debt instruments described in section 1221(4).

"Subpart C—Regulations

"Sec. 1397C. Regulations.

"SEC. 1397C. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including—

"(1) regulations limiting the benefit of this part in circumstances where such benefits, in combination with benefits provided under other Federal programs, would result in an activity being 100 percent or more subsidized by the Federal Government,

"(2) regulations preventing abuse of the provisions of this part, and

"(3) regulations dealing with inadvertent failures of entities to be qualified zone businesses.".

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 is amended by inserting after the item relating to subchapter T the following new item:

"Subchapter U. Designation and treatment of tax enterprise zones."

SEC. 1103. TECHNICAL AND CONFORMING AMENDMENTS.

(a) ENTERPRISE ZONE EMPLOYMENT CREDIT PART OF GENERAL BUSINESS CREDIT.—

(1) Subsection (b) of section 38 (relating to current year business credit) is amended by striking "plus" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting ", plus", and by adding at the end the following new paragraph:

"(8) the enterprise zone employment credit determined under section 1394(a)."

(2) Subsection (d) of section 39 is amended by adding at the end thereof the following new paragraph:

"(3) NO CARRYBACK OF SECTION 1394 CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the enterprise zone employment credit determined under section 1394 may be carried to a taxable year ending before the date of the enactment of section 1394."

(b) NONITEMIZERS ALLOWED DEDUCTION FOR ENTERPRISE ZONE STOCK.—Subsection (a) of section 62 is amended by adding at the end thereof the following new paragraph:

"(14) ENTERPRISE ZONE STOCK.—The deduction allowed by section 1396."

(c) DENIAL OF DEDUCTION FOR PORTION OF WAGES EQUAL TO ENTERPRISE ZONE EMPLOYMENT CREDIT.—

(1) Subsection (a) of section 280C (relating to rule for targeted jobs credit) is amended—

(A) by striking "the amount of the credit determined for the taxable year under section 51(a)" and inserting "the sum of the credits determined for the taxable year under sections 51(a) and 1394(a)", and

(B) by striking "TARGETED JOBS CREDIT" in the subsection heading and inserting "EMPLOYMENT CREDITS".

(2) Subsection (c) of section 196 (relating to deduction for certain unused business credits) is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end the following new paragraph:

"(6) the enterprise zone employment credit determined under section 1394(a)."

(d) OTHER AMENDMENTS.—

(1)(A) Section 172(d)(2) (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

"(B) the exclusion provided by section 1397 shall not be allowed."

(B) Subparagraph (B) of section 172(d)(4) is amended by inserting ", (2)(B)," after "paragraph (1)".

(2) Subsection (c) of section 381 (relating to carryovers in certain corporate acquisitions) is amended by adding at the end the following new paragraph:

"(26) ENTERPRISE ZONE PROVISIONS.—The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and subchapter U, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of subchapter U in respect of the distributor or transferor corporation."

(3) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1397(a), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1397. In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(4) Paragraph (3) of section 643(a) is amended by adding at the end thereof the following new sentence: "The exclusion under section 1397 shall not be taken into account."

(5) Paragraph (4) of section 691(c) is amended by striking "1201, and 1211" and inserting "1201, 1397, and 1211".

(6) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to section 1397 and" after "except that".

(7) Paragraph (1) of section 1371(d) (relating to coordination with investment credit recapture) is amended by inserting before the period at the end the following "and for purposes of sections 1394(d)(3)".

(8) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking "and" at the end of paragraph (23), by striking the period at the end of paragraph (24) and inserting a semicolon, and by adding at the end thereof the following new paragraphs:

"(25) in the case of stock with respect to which a deduction was allowed under section 1396(a), to the extent provided in section 1396(e); and

"(26) in the case of property the acquisition of which resulted under section 1397A in the nonrecognition of any part of the gain realized on the sale or exchange of other property, to the extent provided in section 1397A(e)."

(9) Section 1223 (relating to holding period of property) is amended by redesignating paragraph (15) as paragraph (16) and by inserting after paragraph (14) the following new paragraph:

"(15) In determining the period for which the taxpayer has held property the acquisition of which resulted under section 1397A in the nonrecognition of any part of the gain realized on the sale or exchange of any qualified zone asset (as defined in section 1397A(b)), there shall be included the period for which such asset had been held as of the date of such sale or exchange."

SEC. 1104. EFFECTIVE DATE.

(a) GENERAL RULE.—The amendments made by this part shall take effect on the date of the enactment of this Act.

(b) REQUIREMENT FOR RULES.—Not later than the date 4 months after the date of the enactment of this Act, the appropriate Secretaries shall issue rules—

(1) establishing the procedures for nominating areas for designation as tax enterprise zones,

(2) establishing a method for comparing the factors listed in section 1392(d) of the Internal Revenue Code of 1986 (as added by this part),

(3) establishing recordkeeping requirements necessary or appropriate to assist the studies required by part IV, and

(4) providing that State and local governments shall have at least 30 days after such rules are published to file applications for nominated areas before such applications are evaluated and compared and any area designated as a tax enterprise zone.

PART II—REDEVELOPMENT BONDS FOR TAX ENTERPRISE ZONES

SEC. 1111. SPECIAL RULES FOR REDEVELOPMENT BONDS PROVIDING FINANCING FOR TAX ENTERPRISE ZONES.

(a) IN GENERAL.—Subsection (c) of section 144 (relating to qualified redevelopment bonds) is amended by adding at the end thereof the following new paragraph:

"(9) SPECIAL RULES FOR TAX ENTERPRISE ZONES.—For purposes of this subsection, in the case of bonds issued during the 60-month period beginning on the date a tax enterprise zone is designated—

"(A) TREATMENT AS DESIGNATED BLIGHTED AREA.—Such tax enterprise zone shall be treated as a designated blighted area during such 60-month period (or, if shorter, the period such designation is in effect). Any area designated by reason of the preceding sentence shall not be taken into account in applyng paragraph (4)(C).

"(B) SECURITY FOR BONDS.—The requirements of paragraph (2)(B) shall be treated as met with respect to a financed area that is within a tax enterprise zone if the general purpose governmental unit guarantees the payment of principal and interest on the issue either directly or through insurance, a letter of credit, or a similar agreement but only if the cost thereof is financed other than with proceeds of any tax-exempt private activity bond or earnings on such proceeds.

"(C) EXPANSION OF REDEVELOPMENT PURPOSES.—

"(i) IN GENERAL.—The term 'redevelopment purposes' includes the making of loans to any enterprise zone business (as defined in section 1397B) for—

"(I) the acquisition of land within the tax enterprise zone for use in such business, or

"(II) the acquisition, construction, reconstruction, or improvement by such business of land, or property of a character subject to the allowance for depreciation, for use in such business.

"(ii) $2,500,000 LIMITATION.—Clause (i) shall apply to loans made to any enterprise zone business only if the aggregate principal amount of such loans (whether or not financed by the same issue) does not exceed $2,500,000. For purposes of the preceding sentence, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as 1 person.

"(iii) LOANS MUST BE MADE WITHIN 18 MONTHS AFTER BONDS ISSUED; REPAYMENTS MUST BE USED FOR REDEMPTIONS.—Clause (i) shall apply only to loans—

"(I) made during the 18-month period beginning on the date of issuance of the issue financing such loan,

"(II) repayments of principal on which are used not later than the close of the 1st semiannual period beginning after the date the repayment is received to redeem bonds which are part of such issue, and

"(III) the effective rate of interest on which does not exceed the yield on the issue by more than 0.125 percentage points.

In determining the effective rate of interest for purposes of subclause (III), there shall be taken into account all fees, charges, and other amounts (other than amounts for any credit report) borne by the borrower which are attributable to the loan or the bond issue.

"(iv) HOUSING LOANS EXCLUDED.—Clause (i) shall not apply to any loan to be used directly or indirectly to provide residential real property.

"(v) COORDINATION WITH RESTRICTIONS ON USE OF PROCEEDS.—Paragraphs (6) and (8) shall apply notwithstanding clause (i); except that in applying paragraph (6), subsection (a)(8) shall be treated as not including a reference to a facility the primary purpose of which is retail food services.

"(D) ISSUER TO DESIGNATE AMOUNT OF ISSUE TO BE USED FOR LOANS.—Subparagraph (C) shall not apply with respect to any issue unless the issuer designates before the date of issuance the amount of the proceeds of such issue which is to be used for loans to which subparagraph (C)(i) applies. If such amount exceeds the principal amount of loans to which subparagraph (C)(i) applies, an amount of proceeds equal to such excess shall be used not later than the close of the 1st semiannual period beginning after the

close of the 18-month period referred to in subparagraph (C)(iii) to redeem bonds which are part of such issue.

"(E) DE MINIMIS REDEMPTIONS NOT REQUIRED.—Subparagraphs (C)(iii) and (D) shall not be construed to require amounts of less than $250,000 to be used to redeem bonds. The Secretary may by regulation treat related issues as 1 issue for purposes of the preceding sentence.

"(F) PENALTY.—

"(i) IN GENERAL.—In the case of property with respect to which financing was provided under this paragraph, if at any time during the 10-period beginning on the date such financing was provided—

"(I) such property ceases to be in use in an enterprise zone business (as defined in section 1397B), or

"(II) substantially all of the use of such property ceases to be in a tax enterprise zone,

there is hereby imposed on the trade or business to which such financing was provided a penalty equal to 1.25 percent of so much of the face amount of all financing provided (whether or not from the same issue and whether or not such issue is outstanding) before such cessation to the trade or business using such property.

"(ii) NO PENALTY BY REASON OF ZONE TERMINATION.—No penalty shall be imposed under clause (i) solely by reason of the termination or revocation of a tax enterprise zone designation.

"(iii) EXCEPTION FOR BANKRUPTCY.—Clause (i) shall not apply to any cessation resulting from bankruptcy."

(b) VOLUME CAP ONLY CHARGED WITH 50 PERCENT OF TAX ENTERPRISE ZONE REDEVELOPMENT BONDS.—Subsection (g) of section 146 is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(5) 50 percent of any qualified redevelopment bond issued—

"(A) as part of an issue 95 percent or more of the net proceeds of which are to be used for 1 or more redevelopment purposes (as defined in section 144(c)) in a tax enterprise zone, and

"(B) during the 60-month period beginning on the date of the designation of such zone."

(c) PENALTIES FOR LOANS MADE TO BUSINESSES THAT CEASE TO BE ENTERPRISE ZONE BUSINESSES, ETC.—Subsection (b) of section 150 is amended by adding at the end thereof the following new paragraph:

"(6) ENTERPRISE ZONE REDEVELOPMENT BONDS.—In the case of any financing provided by an issue the interest on which is exempt from tax by reason of section 144(c)(9)—

"(A) IN GENERAL.—No deduction shall be allowed under this chapter for interest on such financing which ac-

crues during the period beginning on the first day of the calendar year which includes the date on which—

"(i) the trade or business to which the financing was provided ceases to be an enterprise zone business (as defined in section 1397B), or

"(ii) substantially all of the use of the property (determined in accordance with subchapter U) with respect to which the financing was provided ceases to be in a tax enterprise zone.

The preceding sentence shall not apply solely by reason of the termination or revocation of a tax enterprise zone designation.

"(B) EXCEPTION FOR BANKRUPTCY.—This paragraph shall not apply to any cessation resulting from bankruptcy."

PART III—CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS

SEC. 1121. CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS.

(a) IN GENERAL.—For purposes of section 38 of the Internal Revenue Code of 1986, the current year business credit shall include the credit determined under this section.

(b) DETERMINATION OF CREDIT.—The credit determined under this section for each taxable year in the credit period with respect to any qualified CDC contribution made by the taxpayer is an amount equal to 5 percent of such contribution.

(c) CREDIT PERIOD.—For purposes of this section, the credit period with respect to any qualified CDC contribution is the period of 10 taxable years beginning with the taxable year during which such contribution was made.

(d) QUALIFIED CDC CONTRIBUTION.—For purposes of this section—

(1) IN GENERAL.—The term "qualified CDC contribution" means any transfer of cash—

(A) which is made to a selected community development corporation during the 5-year period beginning on the date such corporation was selected for purposes of this section,

(B) the amount of which is available for use by such corporation for at least 10 years,

(C) which is to be used by such corporation for qualified low-income assistance within its operational area, and

(D) which is designated by such corporation for purposes of this section.

(2) LIMITATIONS ON AMOUNT DESIGNATED.—The aggregate amount of contributions to a selected community development corporation which may be designated by such corporation shall not exceed $2,000,000.

(e) SELECTED COMMUNITY DEVELOPMENT CORPORATIONS.—

(1) In general.—For purposes of this section, the term "selected community development corporation" means any corporation—

(A) which is described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code,

(B) the principal purposes of which include promoting employment of, and business opportunities for, low-income individuals who are residents of the operational area, and

(C) which is selected by the Secretary of Housing and Urban Development for purposes of this section.

(2) Only 10 corporations may be selected.—

(A) In general.—The Secretary of Housing and Urban Development may select 10 corporations for purposes of this section, subject to the availability of eligible corporations. Such selections may be made only before January 1, 1994. At least 4 of the operational areas of the corporations selected must be rural areas (as defined by 1393(6) of such Code).

(B) Priority of designations.—In selecting corporations for purposes of this section, such Secretary shall give priority to corporations with a demonstrated record of performance in administering community development programs which target at least 75 percent of the jobs emanating from their investment funds to low income or unemployed individuals.

(3) Operational areas must have certain characteristics.—A corporation may be selected for purposes of this section only if its operational area meets the following criteria:

(A) The area meets the size requirements under paragraph (1)(C) or (2)(C) of section 1391(b) which would apply if such area were to be designated as a tax enterprise zone.

(B) The unemployment rate (as determined by the appropriate available data) is not less than the national unemployment rate.

(C) The median family income of residents of such area does not exceed 80 percent of the median gross income of residents of the jurisdiction of the local government which includes such area.

(f) Qualified Low-Income Assistance.—For purposes of this section, the term "qualified low-income assistance" means assistance—

(1) which is designed to provide employment of, and business opportunities for, low-income individuals who are residents of the operational area of the community development corporation, and

(2) which is approved by the Secretary of Housing and Urban Development.

PART IV—INDIAN EMPLOYMENT AND INVESTMENT

SEC. 1131. INVESTMENT TAX CREDIT FOR PROPERTY ON INDIAN RESERVATIONS.

(a) ALLOWANCE OF INDIAN RESERVATION CREDIT.—Section 46 (relating to investment credits) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding after paragraph (3) the following new paragraph:

"(4) the Indian reservation credit."

(b) AMOUNT OF INDIAN RESERVATION CREDIT.—

(1) IN GENERAL.—Section 48 (relating to the energy credit and the reforestation credit) is amended by adding after subsection (b) the following new subsection:

"(c) INDIAN RESERVATION CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the Indian reservation credit for any taxable year is the Indian reservation percentage of the qualified investment in qualified Indian reservation property placed in service during such taxable year, determined in accordance with the following table:

"In the case of qualified Indian reservation property which is:	*The Indian reservation percentage is:*
Reservation personal property	*10*
New reservation construction property	*15*
Reservation infrastructure investment	*15.*

"(2) QUALIFIED INVESTMENT IN QUALIFIED INDIAN RESERVATION PROPERTY DEFINED.—For purposes of this subpart—

"(A) IN GENERAL.—The term 'qualified Indian reservation property' means property—

"(i) which is—

"(I) reservation personal property,

"(II) new reservation construction property, or

"(III) reservation infrastructure investment, and

"(ii) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)).

The term 'qualified Indian reservation property' does not include any property (or any portion thereof) placed in service for purposes of conducting or housing class I, II, or III gaming (as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703).

"(B) QUALIFIED INVESTMENT.—The term 'qualified investment' means—

"(i) in the case of reservation infrastructure investment, the amount expended by the taxpayer for the acquisition or construction of the reservation infrastructure investment; and

"(ii) in the case of all other qualified Indian reservation property, the taxpayer's basis for such property.

"(C) RESERVATION PERSONAL PROPERTY.—The term 'reservation personal property' means qualified personal prop-

erty which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation. Property shall not be treated as 'reservation personal property' if it is used or located outside the Indian reservation on a regular basis.

"(D) QUALIFIED PERSONAL PROPERTY.—The term 'qualified personal property' means property—

"(i) for which depreciation is allowable under section 168,

"(ii) which is not—

"(I) nonresidential real property,

"(II) residential rental property, or

"(III) real property which is not described in (I) or (II) and which has a class life of more than 12.5 years.

For purposes of this subparagraph, the terms 'nonresidential real property', 'residential rental property', and 'class life' have the respective meanings given such terms by section 168.

"(E) NEW RESERVATION CONSTRUCTION PROPERTY.—The term 'new reservation construction property' means qualified real property—

"(i) which is located in an Indian reservation,

"(ii) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, and

"(iii) which is originally placed in service by the taxpayer.

"(F) QUALIFIED REAL PROPERTY.—The term 'qualified real property' means property for which depreciation is allowable under section 168 and which is described in clause (I), (II), or (III) of subparagraph (D)(ii).

"(G) RESERVATION INFRASTRUCTURE INVESTMENT.—

"(i) IN GENERAL.—The term 'reservation infrastructure investment' means qualified personal property or qualified real property which—

"(I) benefits the tribal infrastructure,

"(II) is available to the general public, and

"(III) is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation.

"(ii) PROPERTY MAY BE LOCATED OUTSIDE THE RESERVATION.—Qualified personal property and qualified real property used or located outside an Indian reservation shall be reservation infrastructure investment only if its purpose is to connect to existing tribal infrastructure in the reservation, and shall include, but not be limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

"(H) COORDINATIION WITH OTHER CREDITS.—The term 'qualified Indian reservation property' shall not include any property with respect to which the energy credit or the rehabilitation credit is allowed.

"(3) REAL ESTATE RENTALS.—For purposes of this section, the rental to others of real property located within an Indian reservation shall be treated as the active conduct of a trade or business in an Indian reservation.

"(4) INDIAN RESERVATION DEFINED.—For purposes of this subpart, the term 'Indian reservation' means a reservation, as defined in—

"(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

"(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

"(5) LIMITATION BASED ON UNEMPLOYMENT.—

"(A) GENERAL RULE.—The Indian reservation credit allowed under section 46 for any taxable year shall equal—

"(i) if the Indian unemployment rate on the applicable Indian reservation for which the credit is sought exceeds 300 percent of the national average unemployment rate at any time during the calendar year in which the property is placed in service or during the immediately preceding 2 calendar years, 100 percent of such credit,

"(ii) if such Indian unemployment rate exceeds 150 percent but not 300 percent, 50 percent of such credit, and

"(iii) if such Indian unemployment rate does not exceed 150 percent, 0 percent of such credit.

"(B) SPECIAL RULE FOR LARGE PROJECTS.—In the case of a qualified Indian reservation property which has (or is a component of a project which has) a projected construction period of more than 2 years or a cost of more than $1,000,000, subparagraph (A) shall apply by substituting 'during the earlier of the calendar year in which the taxpayer enters into a binding agreement to make a qualified investment or the first calendar year in which the taxpayer has expended at least 10 percent of the taxpayer's qualified investment, or the preceding calendar year' for 'during the calendar year in which the property is placed in service or during the immediately preceding 2 calendar years'.

"(C) DETERMINATION OF INDIAN UNEMPLOYMENT.—For purposes of this paragraph, with respect to any Indian reservation, the Indian unemployment rate shall be based upon Indians unemployed and able to work, and shall be certified by the Secretary of the Interior.

"(6) COORDINATION WITH NONREVENUE LAWS.—Any reference in this subsection to a provision not contained in this title shall be treated for purposes of this subsection as a reference to such provision as in effect on the date of the enactment of this paragraph."

(2) LODGING TO QUALIFY.—Paragraph (2) of section 50(b) (relating to property used for lodging) is amended—

(A) by striking "and" at the end of subparagraph (C),

(B) by striking the period at the end of subparagraph (D) and inserting "; and," and

(C) by adding at the end thereof the following subparagraph:

"(E) new reservation construction property."

(c) RECAPTURE.—Subsection (a) of section 50 (relating to recapture in case of dispositions, etc.), is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULES FOR INDIAN RESERVATION PROPERTY.—

"(A) IN GENERAL.—If, during any taxable year, property with respect to which the taxpayer claimed an Indian reservation credit—

"(i) is disposed of, or

"(ii) in the case of reservation personal property—

"(I) otherwise ceases to be investment credit property with respect to the taxpayer, or

"(II) is removed from the Indian reservation, converted or otherwise ceases to be Indian reservation property,

the tax under this chapter for such taxable year shall be increased by the amount described in subparagraph (B).

"(B) AMOUNT OF INCREASE.—The increase in tax under subparagraph (A) shall equal the aggregate decrease in the credits allowed under section 38 by reason of section 48(c) for all prior taxable years which would have resulted had the qualified investment taken into account with respect to the property been limited to an amount which bears the same ratio to the qualified investment with respect to such property as the period such property was held by the taxpayer bears to the applicable recovery period under section 168(g).

"(C) COORDINATION WITH OTHER RECAPTURE PROVISIONS.—In the case of property to which this paragraph applies, paragraph (1) shall not apply and the rules of paragraphs (3), (4), and (5) shall apply."

(d) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (3) of section 50(c) (relating to basis adjustment to investment credit property) is amended by striking "energy credit or reforestation credit" and inserting "energy credit, reforestation credit or Indian reservation credit other than with respect to any expenditure for new reservation construction property".

(e) CERTAIN GOVERNMENTAL USE PROPERTY TO QUALIFY.—Paragraph (4) of section 50(b) (relating to property used by governmental units or foreign persons or entities) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and inserting after subparagraph (C) the following new subparagraph:

"(D) EXCEPTION FOR RESERVATION INFRASTRUCTURE INVESTMENT.—This paragraph shall not apply for purposes of determining the Indian reservation credit with respect to reservation infrastructure investment."

(f) APPLICATION OF AT-RISK RULES.—Subparagraph (C) of section 49(a)(1) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) the qualified investment in qualified Indian reservation property."

(g) CLERICAL AMENDMENTS.—

(1) The caption of section 48 is amended by deleting the period at the end thereof and adding "; INDIAN RESERVATION CREDIT."

(2) The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by striking out the item relating to section 48 and inserting the following:

"Sec. 48. Energy credit; reforestation credit; Indian reservation credit."

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 1992.

SEC. 1132. INDIAN EMPLOYMENT CREDIT.

(a) ALLOWANCE OF INDIAN EMPLOYMENT CREDIT.—Section 38(b) (relating to general business credits), as amended by section 1103, is amended by striking "plus" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting ", plus", and by adding after paragraph (8) the following new paragraph:

"(9) the Indian employment credit as determined under section 45(a)."

(b) AMOUNT OF INDIAN EMPLOYMENT CREDIT.—Subpart D of Part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 45. INDIAN EMPLOYMENT CREDIT.

"(a) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—For purposes of section 38, the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is 10 percent (30 percent in the case of an employer with at least 85 percent Indian employees throughout the taxable year) of the sum of—

"(A) the qualified wages paid or incurred during such taxable year, plus

"(B) qualified employee health insurance costs paid or incurred during such taxable year.

In no event shall the amount of the Indian employment credit for any taxable year exceed the credit limitation amount determined under subsection (e) for such taxabale year.

"(2) INDIAN EMPLOYEE.—For purposes of paragraph (1), the term 'Indian employee' means an employee who is an enrolled member of an Indian tribe or the spouse of such a member.

"(b) QUALIFIED WAGES; QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—For purposes of this section—

"(1) QUALIFIED WAGES.—

"(A) IN GENERAL.—The term 'qualified wages' means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee.

"(B) COORDINATION WITH TARGETED JOBS CREDIT.—The term 'qualified wages' shall not include wages attributable to service rendered during the 1-year period beginning with

the day the individual begins work for the employer if any portion of such wages is taken into account in determining the credit under section 51.

"(2) QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—

"(A) IN GENERAL.—The term 'qualified employee health insurance costs' means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

"(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

"(c) QUALIFIED EMPLOYEE.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term "qualified employee" means, with respect to any period, any employee of an employer if—

"(A) substantially all of the services performed during such period by such employee for such employer are performed within an Indian reservation,

"(B) the principal place of abode of such employee while performing such services is on or near the reservation in which the services are performed, and

"(C) the employee began work for such employer on or after January 1, 1993.

"(2) CREDIT ALLOWED ONLY FOR FIRST 7 YEARS.—An employee shall not be treated as a qualified employee for any period after the date 7 years after the day on which such employee first began work for the employer.

"(3) INDIVIDUALS RECEIVING WAGES IN EXCESS OF $30,000 NOT ELIGIBLE.—An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000. The Secretary shall adjust the $30,000 amount contained in the preceding sentence for years beginning after 1992 at the same time and in the same manner as under section 415(d).

"(4) EMPLOYMENT MUST BE TRADE OR BUSINESS EMPLOYMENT.—An employee shall be treated as a qualified employee for any taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer. Any determination as to whether the preceding sentence applies with respect to any employee for any taxable year shall be made without regard to subsection (f)(2).

"(5) CERTAIN EMPLOYEES NOT ELIGIBLE.—The term 'qualified employee' shall not include—

"(A) any individual described in subparagraph (A), (B), or (C) of section 51(i)(1),

"(B) any 5-percent owner (as defined in section 416(i)(1)(B)),

"(C) any individual who is neither an enrolled member of an Indian tribe nor the spouse of an enrolled member of an Indian tribe, and

"(D) any individual if the services performed by such individual for the employer involve the conduct of class I, II, or III gaming as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), or are performed in a building housing such gaming activity.

"(6) INDIAN TRIBE DEFINED.—The term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(7) INDIAN RESERVATION DEFINED.—The term 'Indian reservation' means a reservation, as defined in—

"(A) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or

"(B) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903 (10)).

"(d) EARLY TERMINATION OF EMPLOYMENT BY EMPLOYER.—

"(1) IN GENERAL.—If the employment of any employee is terminated by the taxpayer before the day 1 year after the day on which such employee began work for the employer—

"(A) no wages (or qualified employee health insurance costs) with respect to such employee shall be taken into account under subsection (a) for the taxable year in which such employment is terminated, and

"(B) the tax under this chapter for the taxable year in which such employment is terminated shall be increased by the aggregate credits (if any) allowed under section 38(a) for prior taxable years by reason of wages (or qualified employee health insurance costs) taken into account with respect to such employee.

"(2) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any termination of employment to which paragraph (1) applies, the carrybacks and carryovers under section 39 shall be properly adjusted.

"(3) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to—

"(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

"(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

"(iii) a termination of employment of an individual if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

"(B) CHANGES IN FORM OF BUSINESS.—For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

"(i) by a transaction to which section 381(a) applies if the employee continues to be employed by the acquiring corporation, or

"(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

"(4) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of—

"(A) determining the amount of any credit allowable under this chapter, and

"(B) determining the amount of the tax imposed by section 55."

"(e) CREDIT LIMITATION AMOUNT.—For purposes of this section—

"(1) CREDIT LIMITATION AMOUNT.—The credit limitation amount for a taxable year shall be an amount equal to the credit rate (10 or 30 percent as determined under subsection (a)) multiplied by the increased credit base.

"(2) INCREASED CREDIT BASE.—The increased credit base for a taxable year shall be the excess of—

"(A) the sum of any qualified wages and qualified employee health insurance costs paid or incurred by the employer during the taxable year with respect to employees whose wages (paid or incurred by the employer) during the taxable year do not exceed the amount determined under paragraph (3) of subsection (c), over

"(B) the sum of any qualified wages and qualified employee health insurance costs paid or incurred by the employer (or any predecessor) during calendar year 1992 with respect to employees whose wages (paid or incurred by the employer or any predecessor) during 1992 did not exceed $30,000.

"(3) SPECIAL RULE FOR SHORT TAXABLE YEARS.—For any taxable year having less than 12 months—

"(A) the amounts paid or incurred by the employer shall be annualized for purposes of determining the increased credit base, and

"(B) the credit limitation amount shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) WAGES.—The term 'wages' has the same meaning given to such term in section 51.

"(2) CONTROLLED GROUPS.—

"(A) All employers treated as a single employer under section (a) or (b) of section 52 shall be treated as a single employer for purposes of this section.

"(B) The credit (if any) determined under this section with respect to each such employer shall be its proportionate share of the wages and qualified employee health insurance costs giving rise to such credit.

"(3) CERTAIN OTHER RULES MADE APPLICABLE.—Rules similar to the rules of section 51(k) and subsections (c), (d), and (e) of section 52 shall apply.

"(4) COORDINATION WITH NONREVENUE LAWS.—Any reference in this section to a provision not contained in this title shall be treated for purposes of this section as a reference to such provision as in effect on the date of the enactment of this paragraph."

(c) DENIAL OF DEDUCTION FOR PORTION OF WAGES EQUAL TO INDIAN EMPLOYMENT CREDIT.—

(1) Subsection (a) of section 280C (relating to rule for targeted jobs credit) is amended by striking "51(a)" and inserting "45(a), 51(a), and".

(2) Subsection (c) of section 196 (relating to deduction for certain unused business credits) is amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", and", and by adding at the end the following new paragraph:

"(7) the Indian employment credit determined under section 45(a)."

(d) DENIAL OF CARRYBACKS TO PREENACTMENT YEARS.—Subsection (d) of section 39 is amended by adding at the end thereof the following new paragraph:

"(4) NO CARRYBACK OF SECTION 45 CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the Indian employment credit determined under section 45 may be carried to a taxable year ending before the date of the enactment of section 45."

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following:

"Sec. 45. Indian employment credit."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid or incurred after December 31, 1992.

PART V—STUDY

SEC. 1141. STUDY OF EFFECTIVENESS OF TAX ENTERPRISE ZONE INCENTIVES.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the appropriate Secretary (as defined in section 1393(7) of the Internal Revenue Code of 1986, as added by this subtitle), shall contract within 3 months of the date of the enactment of this Act, with the National Academy of Sciences (hereafter in this section referred to as the 'Academy') to conduct a study of the relative effectiveness of the incentives provided by this subtitle and the assistance provid-

ed by subtitle B of title XI in achieving the purposes of such subtitles in tax enterprise zones.

(b) CONDUCT OF STUDY.—If the Academy contracts for the conduct of the study described in subsection (a), the Academy shall develop a study methodology and shall oversee and manage the conduct of such study.

(c) REPORTS.—The Academy shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) not later than July 1, 1997, an interim report setting forth the findings as a result of such study, and

(2) not later than July 1, 2002, a final report setting forth the findings as a result of such study.

Subtitle B—Permanent Extension of Certain Expiring Tax Provisions Primarily Affecting Urban Areas

SEC. 1201. LOW-INCOME HOUSING CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Section 42 (relating to low-income housing credit) is amended by striking subsection (o).

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to periods after June 30, 1992.

(b) ELECTION TO DETERMINE RENT LIMITATION BASED ON NUMBER OF BEDROOMS.—In the case of a building to which the amendments made by section 7108(e)(1) of the Revenue Reconciliation Act of 1989 did not apply, the taxpayer may elect to have such amendments apply to such building but only with respect to tenants first occupying any unit in the building after the date of the election. Such an election may be made only during the 180-day period beginning on the date of the enactment of this Act, and, once made, shall be irrevocable.

SEC. 1202. TARGETED JOBS CREDIT.

(a) IN GENERAL.—Subsection (c) of section 51 (relating to amount of targeted jobs credit) is amended by striking paragraph (4).

(b) RESTORATION OF CREDIT FOR ECONOMICALLY DISADVANTAGED YOUTH WHO HAVE NOT ATTAINED AGE 25.—Subparagraph (B) of section 51(d)(3) is amended by striking "age 23" and inserting "age 25".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after June 30, 1992.

SEC. 1203. QUALIFIED MORTGAGE BONDS.

(a) IN GENERAL.—Paragraph (1) of section 143(a) (defining qualified mortgage bond) is amended to read as follows:

"(1) QUALIFIED MORTGAGE BOND DEFINED.—For purposes of this title, the term 'qualified mortgage bond' means a bond which is issued as part of a qualified mortgage issue."

(b) Mortgage Credit Certificates.—Section 25 is amended by striking subsection (h) and by redesignating subsection (i) as subsection (h).

(c) Treatment of Resale Price Control and Subsidy Lien Programs.—Subsection (k) of section 143 is amended by adding at the end thereof the following new paragraph:

"(10) Treatment of resale price control and subsidy lien programs.—

"(A) In general.—In the case of a residence which is located in a high housing cost area (as defined in section 143(f)(5)), the interest of a governmental unit in such residence by reason of financing provided under any qualified program shall not be taken into account under this section (other than subsection (m)), and the acquisition cost of the residence which is taken into account under subsection (e) shall be such cost reduced by the amount of such financing.

"(B) Qualified program.—For purposes of subparagraph (A), the term 'qualified program' means any governmental program providing mortgage loans (other than 1st mortgage loans)—

"(i) which restricts (throughout the 9-year period beginning on the date the financing is provided) the resale of the residence to a purchaser qualifying under this section and to a price determined by an index that reflects less than the full amount of any appreciation in the residence's value, or

"(ii) which provides for deferred or reduced interest payments on such financing and grants the governmental unit a share in the appreciation of the residence,

but only if such financing is not provided directly or indirectly through the use of any tax-exempt private activity bond."

(d) Financing Allowed for Contract for Deed Agreements.—

(1) In general.—Paragraph (2) of section 143(d) (relating to exceptions to 3-year requirement) is amended—

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

(B) by adding "and" at the end of subparagraph (B), and

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

"(C) financing with respect to land described in subsection (i)(1)(C) and the construction of any residence thereon."

(2) Exception to new mortgage requirement.—Paragraph (1) of section 143(i) (relating to mortgages must be new mortgages) is amended by adding at the end thereof the following new subparagraph:

"(C) Exception for certain contract for deed agreements.—

"(i) In general.—In the case of land possessed under a contract for deed by a mortgagor with family income (as defined in subsection (f)(2)) of less than $15,000 in the year in which owner-financing is provid-

ed, the contract for deed shall not be treated as an existing mortgage for purposes of subparagraph (A).

"(ii) CONTRACT FOR DEED DEFINED.—For purposes of this subparagraph, the term 'contract for deed' means a seller-financed contract for the conveyance of land under which—

"(I) legal title does not pass to the purchaser until the consideration under the contract is fully paid to the seller, and

"(II) the seller's remedy for nonpayment is forfeiture rather than judicial or nonjudicial foreclosure.

"(iii) ADJUSTMENT TO INCOME LEVEL.—In the case of any calendar year after 1992, the dollar amount contained in clause (i) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, by substituting 'calendar year 1991' for 'calendar year 1989' in subparagraph (B) thereof."

(3) ACQUISITION COST INCLUDES COST OF LAND.—Clause (iii) of section 143(k)(3)(B) is amended by inserting "(other than land described in subsection (i)(1)(C)(i))" after "cost of land".

(e) EFFECTIVE DATES.—

(1) BONDS.—The amendment made by subsection (a) shall apply to bonds issued after June 30, 1992.

(2) CERTIFICATES.—The amendment made by subsection (b) shall apply to elections for periods after June 30, 1992.

(3) PROGRAMS.—The amendment made by subsection (c) shall apply to qualified mortgage bonds issued and mortgage credit certificates provided on or after the date of the enactment of this Act.

(4) CONTRACT FOR DEED AGREEMENTS.—The amendments made by subsection (d) shall apply to loans originated after the date of the enactment of this Act.

Subtitle C—Foster Care and Income Security

SEC. 1301. REFERENCES.

Except as otherwise provided in this subtitle, wherever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

PART I—CHILD WELFARE; FOSTER CARE; SUBSTANCE ABUSE TREATMENT AND SERVICES

SEC. 1311. CHILD WELFARE SERVICES DESIGNED TO STRENGTHEN AND PRESERVE FAMILIES, AND SUBSTANCE ABUSE PREVENTION AND TREATMENT.

(a) IN GENERAL.—Part B of title IV (42 U.S.C. 620 09628) is amended—

(1) by striking the heading and inserting the following:

"PART B—CHILD WELFARE SERVICES

"Subpart 1—Child Welfare Services";

(2) in section 423(a), by striking "this part" and inserting "this subpart";

(3) in section 428(b), by inserting "or 432, as appropriate" after "421"; and

(4) by adding at the end the following:

"Subpart 2—Innovative Family Services

"SEC. 430. ENTITLEMENT.

"(a) IN GENERAL.—For payments to which States are entitled under this subpart, there shall be available to the Secretary an amount equal to the sum of—

"(1) the innovative services amount for the fiscal year;

"(2) the substance abuse amount for the fiscal year; and

"(3) the respite care amount for the fiscal year.

"(b) DEFINITIONS.—As used in subsection (a):

"(1) INNOVATIVE SERVICES AMOUNT.—The term 'innovative services amount' means—

"(A) for fiscal year 1993, $95,000,000;

"(B) for fiscal year 1994, $220,000,000;

"(C) for fiscal year 1995, $300,000,000;

"(D) for fiscal year 1996, $320,000,000;

"(E) for fiscal year 1997, $365,000,000; and

"(F) for fiscal year 1998 and each succeeding fiscal year, $365,000,000, increased by the percentage (if any) by which—

"(i) the average of the Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) for the 12-month period ending on June 30 of the immediately preceding fiscal year; exceeds

"(ii) the average of the Consumer Price Index (as so defined) for the 12-month period ending on June 30, 1996.

"(2) SUBSTANCE ABUSE AMOUNT.—The term 'substance abuse amount' means—

"(A) for fiscal year 1993, $40,000,000;

"(B) for fiscal year 1994, $90,000,000;

"(C) for fiscal year 1995, $110,000,000;

"(D) for fiscal year 1996, $115,000,000;

"(E) for fiscal year 1997, $125,000,000; and

"(F) for fiscal year 1998 and each succeeding fiscal year, $125,000,000, increased by the percentage (if any) by which—

"(i) the average of the Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) for the 12-month period ending on June 30 of the immediately preceding fiscal year; exceeds

"(ii) the average of the Consumer Price Index (as so defined) for the 12-month period ending on June 30, 1996.

"(3) RESPITE CARE AMOUNT.—The term 'respite care amount' means—

"(A) for fiscal year 1994, $30,000,000;

"(B) for fiscal year 1995, $55,000,000;

"(C) for fiscal year 1996, $65,000,000;

"(D) for fiscal year 1997, $85,000,000; and

"(E) for fiscal year 1998 and each succeeding fiscal year, $85,000,000, increased by the percentage (if any) by which—

"(i) the average of the Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) for the 12-month period ending on June 30 of the immediately preceding fiscal year; exceeds

"(ii) the average of the Consumer Price Index (as so defined) for the 12-month period ending on June 30, 1996.

"SEC. 431. ELIGIBILITY FOR FUNDS.

"(a) INNOVATIVE SERVICES AMOUNT.—

"(1) SUBMISSION OF STATE PLAN AMENDMENTS.—To be eligible to receive funds from its allotment of the innovative services amount for any fiscal year, a State shall submit to the Secretary for approval, as an amendment to the State plan under this part, a detailed description of the services that the State intends to provide through the use of such funds during the fiscal year that includes—

"(A) a strategy for the fiscal year to improve the coordination of services to families in the State any child of which has been or is at risk of being placed outside the home, with other State programs and services;

"(B) an assurance that the State will not use any of such funds to supplant Federal, State, or local funds used for similar purposes;

"(C) an explanation of how such funds will be used, during the fiscal year, to expand services available to such families, including—

"(i) a description of the service programs to be provided through the use of such funds;

"(ii) the goals of the programs; and

"(iii) a description of the populations to which the programs will be targeted, with an assurance that the populations will consist of—

"(I)(aa) families any child of which is in foster care;

"(bb) families any child of which has been in foster care; or

"(cc) families any child of which is at risk of being placed in foster care; and

"(II) such other kinds of families as the State may select; and

"(D) such other information as the Secretary may require by regulation.

"(2) DEADLINE FOR SUBMISSION.—To be eligible to receive funds from its allotment of the innovative services amount for a fiscal year, a State shall comply with paragraph (1)—

"(A) for fiscal year 1993, not later than such date as the Secretary may require; and

"(B) for any succeeding fiscal year, not later than the July 1 of the immediately preceding fiscal year.

"(3) REPORT ON GOALS.—Not later than such date as the Secretary may require, each State which receives funds under this subpart shall submit to the Secretary a report containing a statement of goals that the State expects to achieve during the 5-year period beginning with fiscal year 1993 through the use of such funds.

"(b) SUBSTANCE ABUSE AMOUNT.—To be eligible to receive funds from the allotment to a State of the substance abuse amount for any fiscal year, the Governor of the State shall provide to the Secretary (in such form as the Secretary may prescribe) written assurances that—

"(1) the total amount of funds expended by the State (and any political subdivision thereof) from non-Federal sources to provide nonmedical substance abuse treatment support services for the fiscal year will not be less than the total amount so expended for the immediately preceding fiscal year; and

"(2) an individual who is referred by a State agency described in section 422(b)(1) to a program provided with funds from the allotment shall be given priority in admission to the program.

"SEC. 432. ALLOTMENTS TO STATES.

"The Secretary shall allot separately the innovative services amount, the substance abuse amount, and the respite care amount for any fiscal year, as follows:

"(1) ALLOTMENTS TO TERRITORIES.—The allotment for any fiscal year to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa shall be determined in the same manner in which the allotment to the jurisdiction is determined under section 421.

"(2) OTHER ALLOTMENTS.—

"(A) IN GENERAL.—The allotment for any fiscal year to each other State shall—

"(i) in the case of the innovative services amount, equal—

"(I) the innovative services amount for the fiscal year that remains unallotted after the application of paragraph (1) of this section; multiplied by

"(II) the food stamp percentage of the State for the fiscal year;

"(ii) in the case of the substance abuse amount, equal—

"(I) the substance abuse amount for the fiscal year that remains unallotted after the application of paragraph (1) of this section; multiplied by

"(II) the food stamp percentage of the State for the fiscal year; and

"(iii) in the case of the respite care amount, equal—

"(I) the respite care amount for the fiscal year that remains unallotted after the application of paragraph (1) of this section; multiplied by

"(II) a ratio equal to—

"(aa) the average number of children in the State who received foster care maintenance payments under section 472 for the most recent 3-year period for which such information is available; divided by

"(bb) the average number of children in the United States who received foster care maintenance payments under section 472 for such 3-year period.

"(B) FOOD STAMP PERCENTAGE DEFINED.—As used in subparagraph (A), the term 'food stamp percentage' means, with respect to a State and a fiscal year, the average number of children receiving food stamp benefits in the State for the 4th, 3rd, and 2nd preceding fiscal years, as determined from sample surveys made under section 16(c) of the Food Stamp Act of 1977, expressed as a percentage of the average number of children receiving food stamp benefits in all of the States (to which this paragraph applies) for such preceding fiscal years, as so determined.

"SEC. 433. REALLOTMENTS.

"(a) IN GENERAL.—The amount of any allotment to a State under section 432 for any fiscal year which the State has not expended by the end of the immediately succeeding fiscal year shall be available for reallotment, from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines—

"(1) in the case of the innovative services amount and the substance abuse amount, have complied with section 431 for the 2nd succeeding fiscal year;

"(2) need sums exceeding the sums allotted to such States under sections 421 and 432 for the 2nd succeeding fiscal year, to carry out their State plans under this part for the 2nd succeeding fiscal year; and

"(3) will be able to use such excess sums during the 2nd or 3rd succeeding fiscal year.

"(b) DISTRIBUTION FORMULA.—Any amount available for reallotment shall be reallotted among the other States referred to in subsection (a) on the same basis as allotments are made under section 432.

"(c) TREATMENT OF REALLOTMENTS.—Any amount reallotted to a State under this section is deemed to be part of the allotment of the State under section 432.

"SEC. 434. PAYMENTS TO STATES.

"(a) IN GENERAL.—

"(1) INNOVATIVE SERVICES AMOUNT.—From the sums made available pursuant to section 430(a) for any fiscal year, each State which has complied with section 431 for the fiscal year shall be entitled to receive from the Secretary from the allotment to the State under section 433 of the innovative services amount, and the Secretary shall from time to time pay to the State, an amount equal to 75 percent of the total amount expended by the State during the fiscal year under the plan (including administrative costs) in accordance with section 435.

"(2) SUBSTANCE ABUSE AMOUNT.—From the sums made available pursuant to section 430(a) for any fiscal year, the Governor of each State which has a plan developed in accordance with section 422 and has complied with section 431 for the fiscal year shall be entitled to receive from the Secretary from the allotment to the State under section 433 of the substance abuse amount, and the Secretary shall from time to time pay to the Governor of the State, an amount equal to 75 percent of the total amount expended by the State in accordance with section 436 during the fiscal year.

"(3) RESPITE CARE AMOUNT.—From the sums made available pursuant to section 430(a) for any fiscal year, each State which has a plan developed in accordance with section 422 and has complied with section 431 for the fiscal year shall be entitled to receive from the Secretary from the allotment to the State under section 433 of the respite care amount, and the Secretary shall from time to time pay to the State, an amount equal to 75 percent of the total amount expended by the State in accordance with section 437 during the fiscal year.

"(b) ADMINISTRATIVE PROVISIONS.—

"(1) ESTIMATES.—Before each calendar quarter, the Secretary shall estimate the amount to be paid with respect to each State under this section for the quarter.

"(2) PAYMENTS.—From that portion of each allotment of each State, the Secretary shall pay the amount estimated under paragraph (1), reduced or increased, as the case may be, by any sum (not previously adjusted under this subsection) by which the Secretary finds that any such estimate for a prior quarter was greater or less than the amount which should have been paid with respect to the State under this subsection for such prior quarter.

"(c) AVAILABILITY OF FUNDS.—The amount to which a State is entitled under this part for a fiscal year shall remain available to the State for the fiscal year and the immediately succeeding fiscal year.

"SEC. 435. INNOVATIVE SERVICES.

"(a) IN GENERAL.—Each State which receives funds paid to the State under section 434(a)(1) shall use the funds to plan, develop, expand, operate, or evaluate—

"(1) service programs designed to help children—

"(A) where appropriate, return to families (including adoptive families) from which they have been removed; or

"(B) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

"(2) preplacement preventive services programs, such as intensive family preservation programs, that are designed to help children at risk of foster care placement remain with their families (including adoptive families);

"(3) service programs designed to provide follow-up care to families (including adoptive families) to whom a child has been returned after a foster care placement; or

"(4) family support services to strengthen the functioning of a family (including an adoptive or foster care family), such as—

"(A) services designed to improve parenting skills;

"(B) respite care; and

"(C) adult mentoring services by adult volunteers to low-income or at-risk children or young adults who are in need of additional, on-going contact with adult role models.

"(b) MAINTENANCE OF EFFORT.—Notwithstanding section 434, the amount that would otherwise be paid to a State under section 434(a)(1) shall be reduced by the sum of—

"(1) any amount paid to the State under section 434 which is used to supplant any Federal, State, or local funds used for purposes similar to those for which the innovative services amount is made available; and

"(2) the amount (if any) by which the total amount expended by the State and the political subdivisions thereof from State and local sources for the provision of child welfare services (excluding foster care maintenance payments and adoption assistance payments) during any fiscal year is less than the total amount so expended during fiscal year 1991.

"SEC. 436. COMPREHENSIVE SUBSTANCE ABUSE TREATMENT PROGRAMS FOR PREGNANT WOMEN AND CARETAKER PARENTS.

"(a) IN GENERAL.—Each State which receives funds paid to the State under section 434(a)(2) shall use the funds to plan, develop, expand, operate, or evaluate a qualified comprehensive substance abuse treatment program, and to provide nonmedical substance abuse treatment support services for qualified individuals under the program.

"(b) REPORTS.—The Secretary shall require each State with respect to which payments under section 434(a)(2) are received to report (in such manner and form and at such time as the Secretary determines to be appropriate) such information as may be necessary to permit the Secretary and the Congress to evaluate the operation

and effectiveness of the program and services provided purusant to this section, including—

"(1) the number of individuals participating in the program in the State;

"(2) any limits imposed by the State on the number of individuals who may enroll in the program; and

"(3) the number of individuals on any waiting list maintained by the State for participation in the program.

"(c) DEFINITIONS.—As used in this section:

"(1) NONMEDICAL SUBSTANCE ABUSE TREATMENT SUPPORT SERVICES.—The term 'nonmedical substance abuse treatment support services' means—

"(A) home visitation services, nutrition services, child care, and parenting education;

"(B) substance abuse prevention, treatment, and follow-up services (to the extent such services are not furnished under a State plan approved under title XIX); and

"(C) any other services (such as room and board at a residential substance abuse treatment facility for a qualified individual and, where appropriate, the individual's child) that are determined by the State (in accordance with regulations promulgated by the Secretary) to be necessary and appropriate to support the participation of a qualified individual in a qualified comprehensive substance abuse treatment program.

"(2) QUALIFIED INDIVIDUAL.—The term 'qualified individual' means an individual who is—

"(A) a pregnant woman or caretaker parent who is eligible for medical assistance under a State plan approved under title XIX;

"(B) at the option of the State, any other pregnant woman or caretaker parent whose income does not exceed an amount specified by the State; and

"(C) where appropriate, any child of an individual specified in subparagraph (A) or (B).

"(3) QUALIFIED COMPREHENSIVE SUBSTANCE ABUSE TREATMENT PROGRAM.—The term 'qualified comprehensive substance abuse treatment program' means a program, established by a State, that—

"(A) makes available to qualified individuals (either directly or through arrangements with others) at least the following services:

"(i) substance abuse prevention, treatment, and follow up services (on an outpatient basis and, at the option of the State, in a residential facility);

"(ii) prenatal, gynecological, and pediatric medical services;

"(iii) transportation; and

"(iv) nonmedical substance abuse treatment support services;

"(B) provides for appropriate coordination of substance abuse treatment-related medical services furnished to individuals under the program (under title V or XIX) and non-

medical substance abuse support services for which payment may be made under section 434(a)(2); and

"(C) is administered by an agency (or agencies) designated by the Governor of the State.

"(4) CARETAKER PARENT.—The term 'caretaker parent' means a parent who personally provides (or expects to provide) care for a child.

"SEC. 437. RESPITE CARE.

"(a) IN GENERAL.—Each State which receives funds paid to the State under section 434(a)(3) shall use the funds to provide respite care to any family which operates a foster family home for 1 or more foster children who the State determines have special needs, in accordance with all applicable State and local standards and guidelines and in the least restrictive setting consistent with the special needs of such child or children.

"(b) RESPITE CARE DEFINED.—As used in subsection (a), the term 'respite care' means, with respect to the family of a foster child, care authorized by a State, or provided by a public or private agency designated by a State, to provide temporary relief for the foster parent caregiver or caregivers of the child.

"SEC. 438. EVALUATIONS; REPORT.

"(a) EVALUATIONS.—(1)(A) The Secretary shall, directly or under contract with 1 or more independent research organizations, conduct evaluations of programs carried out pursuant to section 435 in accordance with criteria that the Secretary shall establish, and in accordance with requirements that the Secretary shall prescribe by regulation.

"(B) In developing the criteria referred to in paragraph (1), the Secretary shall consult with—

"(i) individuals who administer programs under this part and part E;

"(ii) private, nonprofit organizations with an interest in child welfare; and

"(iii) other individuals and organizations with recognized expertise in the evaluation of child welfare services programs or other related programs.

"(2) Program evaluations conducted pursuant to paragraph (1) shall—

"(A) use methodologies to measure outcomes with respect to children and families who participate in the programs referred to in paragraph (1) that enable comparison with similar outcome measurements of children and families who have not received the services offered by such programs; and

"(B) include an assessment of family functioning.

"(3) In carrying out the program evaluations described in paragraph (1), the Secretary shall ensure that, where appropriate and feasible, an appropriate portion of such evaluations shall use experimental and control groups (of a sample size determined in accordance with appropriate statistical practices).

"(4)(A) The Secretary shall develop procedures to facilitate the coordination of evaluations conducted by the Secretary and by the States.

"(B) Upon request by a State, the Secretary shall provide technical assistance to facilitate the planning and design of program evaluations under this subsection.

"(b) REPORT.—For fiscal year 1995, and annually thereafter until the programs authorized under this section are completed, the Secretary shall issue a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that includes—

"(1) information concerning the status of evaluations conducted by the Secretary under subsection (a);

"(2) findings from the evaluations;

"(3) information concerning the status of the evaluations conducted by States under this section; and

"(4) a summary of the findings from the State evaluations referred to in paragraph (3).".

(b) REPORT.—The Secretary of Health and Human Services shall, upon completion of a review of the evaluations conducted under section 438(a) of the Social Security Act by the Secretary and by States (but not later than December 1, 1996), submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that includes recommendations for legislation to—

(1) improve child and family services provided under title IV of such Act to strengthen families;

(2) reduce the number of cases in which it is necessary to remove a child from home and place the child in foster care;

(3) promote the reunification of families of children who have been placed in foster care; and

(4) promote planned, permanent living arrangements for children, including adoption, where appropriate.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1992, and shall apply to payments under part B of title IV of the Social Security Act for fiscal year 1993 and to such payments for any succeeding fiscal year.

SEC. 1312. GRANT PROGRAM FOR STATE COURT SYSTEMS TO ASSESS AND IMPROVE PROCEDURES IN CHILD WELFARE CASES.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall make grants in accordance with this section to the highest State courts to conduct assessments of the procedures and functions of the State courts in carrying out parts B and E of title IV of the Social Security Act, and to implement recommendations for improvements in such procedures and functions based on the assessments.

(b) ASSESSMENTS.—The assessment described in this subsection is designed to assess how the State courts are performing the activities required of them by or under State laws enacted pursuant to parts B and E of title IV of the Social Security Act, and to make recommendations on how to improve the implementation of such parts, which shall include the following:

(1) A list of the requirements imposed on the State courts by or under State laws enacted pursuant to such parts, and a list of the State laws, regulations, and policies that govern the implementation of such requirements.

(2) A description of the extent to which State law requires procedural safeguards for children and their parents with respect to each type of proceeding held by State courts pursuant to the State laws referred to in paragraph (1).

(3) A quantitative and qualitative evaluation of how each requirement of such parts is being carried out in the State, including the following:

(A) The circumstances under which, and the frequency with which, the procedural safeguards described pursuant to paragraph (2) are provided.

(B) Whether, during court proceedings, evidence is presented and arguments are made that address the findings and determinations required by the State laws referred to in paragraph (1), and, if so, the amount and sufficiency of time devoted to the presentation of such evidence and the making of such arguments.

(C) The extent to which the procedures and practices of the State courts are reasonably in accord with recommended standards of national organizations concerned with permanent placement for foster children.

(4) The effect of judicial caseloads and case assignments on the quality of court proceedings.

(5) Recommendations on how to better meet the requirements of such parts, and to improve the implementation by the State courts of the State laws enacted pursuant to such parts, including any changes in law, regulation, procedure, judicial manpower, judicial case assignments, judicial caseloads, judicial data collection, judicial education, and requirements for court-appointed legal representatives for parents and children.

(c) APPLICATIONS.—

(1) FISCAL YEAR 1994.—In order for a highest State court to become eligible for a grant under this section for fiscal year 1994, the court shall submit to the Secretary an application which, at a minimum, contains the following:

(A) A timetable for conducting and completing the assessment described in subsection (b) during fiscal year 1994.

(B) A budget for the assessment described in subsection (b), the method which is to be used to conduct the assessment, and a statement of how courts are to be selected for inclusion in the assessment.

(C) A certification that the head of the State agency responsible for children in State-supervised foster care, and, if applicable, the State foster care citizen review board or the State organization of citizen review boards, has had an opportunity to review and comment on a draft of the application before its submission. Such certification must include a copy of such comments.

(D) A description of how the court is to consult and cooperate with the head of the State agency responsible for children in State-supervised foster care, and, if applicable, the State foster care citizen review board or the State organization of citizen review boards, in developing and conducting the assessment described in subsection (b).

(E) Such other information as the Secretary may require by regulation.

(2) FISCAL YEAR 1995.—In order for a highest State court to become eligible for a grant under this section for fiscal year 1995, the court shall submit to the Secretary an application which contains the following:

(A) A copy of the assessment described in subsection (b) that was conducted and completed with funds provided under this section.

(B) A description of the steps that were taken during the conduct of the assessment described in subsection (b), and that will be taken in the fiscal year for which the application is submitted, to consult and cooperate with the State agency responsible for children in State-supervised foster care and, if applicable, the State foster care citizen review board or the State organization of citizen review boards.

(C) A specification of the steps that will be taken to implement the recommendations described in subsection (b)(5) made in the assessment described in subsection (b), and to make other improvements in the judicial handling of child welfare and foster care cases.

(D) Assurances that the applicant will—

(i) coordinate with the head of the State agency responsible for children in State-supervised foster care, and provide the agency with a report on the actions to be taken by the applicant to implement the recommendations of the assessment;

(ii) after completion of the assessment described in subsection (b), use funds received under this section to—

(I) implement the recommendations of the assessment; and

(II) establish new activities or programs, or strengthen existing activities or programs, to carry out such recommendations; and

(iii) not use funds received under this section to supplant State or local funds used for similar purposes.

(E) Such other information as the Secretary may require by regulation.

(3) FISCAL YEARS 1996 AND 1997.—In order for a highest State court to become eligible for a grant under this section for fiscal year 1996 or thereafter, the court shall submit to the Secretary an application which contains the following:

(A) A description and evaluation of the activities of the State courts under the grant made with respect to an application submitted under paragraph (2) in improving their implementation of parts B and E of title IV of the Social Security Act.

(B) A description of the steps that were taken during the previous fiscal year, and that will be taken in the year for which the application is submitted, to consult and cooperate with the head of the State agency responsible for children in State-supervised foster care and, if applicable, the

State foster care citizen review board or the State organization of citizen review boards, in implementing the recommendations made in the assessment described in subsection (b).

(C) A specification of the remaining steps that will be taken to implement the recommendations described in subsection (b)(5) made in the assessment described in subsection (b), and to make other related improvements in the judicial handling of child welfare and foster care cases.

(D) A reaffirmation of the assurances made pursuant to paragraph (2)(D).

(E) Such other information as the Secretary may require by regulation.

(d) GRANT AMOUNTS.—

(1) FISCAL YEAR 1994.—Of the amounts made available to carry out this section for fiscal year 1994, each highest State court that submits an application which meets the requirements of subsection (c)(1) shall be entitled to, and the Secretary shall pay such court, a grant in an amount equal to—

(A) $150,000; plus

(B) the amount which bears the same ratio to the remainder of such available amounts as the number of individuals in the State who have not attained the age of 21 years bears to the number of individuals who have not attained such age in the States the highest State courts of which have so submitted such applications.

(2) FISCAL YEARS 1995, 1996, AND 1997.—Of the amounts made available to carry out this section for each of fiscal years 1995, 1996, and 1997, each highest State court that submits an application which meets the requirements of paragraph (2) or (3) of subsection (c) shall be entitled to, and the Secretary shall pay such court, a grant in an amount equal to—

(A) $170,000; plus

(B) the amount which bears the same ratio to the remainder of the amounts available for the fiscal year as the number of individuals in the State who have not attained the age of 21 years bears to the number of individuals who have not attained such age in the States the highest State courts of which have so submitted such applications.

(3) NO STATE MATCH REQUIRED FOR FISCAL YEAR 1994; REDISTRIBUTION OF UNUSED FUNDS.—Grant amounts under this section shall be paid to, and redistributed among, highest State courts in the same manner in which funds made available pursuant to section 420(b) of the Social Security Act are paid to, and reallotted among, the States pursuant to sections 423 and 424 of such Act, except that—

(A) for fiscal year 1994, section 423(a) of such Act shall be applied by substituting "100 percentum" for "75 percentum"; and

(B) amounts shall be redistributed on the same basis as amounts are distributed under paragraph (1)(B) or (2)(B), and amounts so redistributed shall be treated as part of the amounts distributed under paragraph (1)(B) or (2)(B), whichever is applicable.

(e) Use of Grants.—

(1) Fiscal year 1994.—

(A) Conduct assessment.—Except as provided in subparagraph (B), each highest State court which receives a grant applied for under subsection (c)(1) shall use such grant to conduct the assessment described in subsection (b).

(B) Authority to use excess grant funds to implement recommendations.—Any highest State court which has grant funds remaining after completing the assessment may use the remainder of the grant to implement the recommendations made as part of the assessment, in fiscal year 1994 or fiscal year 1995.

(2) Fiscal years 1995, 1996, and 1997.—Each highest State court which receives a grant applied for under paragraph (2) or (3) of subsection (c) for a fiscal year shall—

(A) use the grant to implement the recommendations made as part of the assessment described in subsection (b); and

(B) expend such grant in the fiscal year or in the immediately succeeding fiscal year.

(f) Administrative Provisions.—

(1) Guidelines for grant applications.—Within 180 days after the effective date of this section, the Secretary shall issue guidelines for grant applications under subsection (c)(1) and transmit such guidelines to each highest State court.

(2) Prompt action on applications.—The Secretary shall take prompt action on each application for a grant under this section.

(g) Definitions.—As used in this section:

(1) Highest state court.—The term "highest State court" means, with respect to a State, the State court with final appellate jurisdiction over civil matters in which State courts perform a function assigned by or under State laws enacted pursuant to part B or E of the Social Security Act.

(2) State.—The term "State" shall have the same meaning such term has for purposes of parts B and E of title IV of the Social Security Act.

(h) Reports to the Congress.—The Secretary shall submit to the Congress a report not later than September 30, 1998, on—

(1) the information obtained from the assessments conducted with grants made under this section; and

(2) the impact of the grant program under this section on the procedures and functions of the State courts in carrying out parts B and E of title IV of the Social Security Act.

(i) Grants Funded Through Innovative Services Entitlement Funds for Certain Fiscal Years.—

(1) Fiscal year 1994.—Of the sums made available pursuant to section 430 of the Social Security Act for fiscal year 1994, $15,000,000 of the innovative services amount (as defined in section 430(b)(1) of such Act) shall be used solely to make grants to highest State courts under this section, before applying section 432 of such Act.

(2) Fiscal years 1995, 1996, and 1997.—Of the sums made available pursuant to section 430 of the Social Security Act for

each of fiscal years 1995, 1996, and 1997, $20,000,000 of the innovative services amount (as defined in section 430(b)(1) of such Act) shall be used solely to make grants to highest State courts under this section, before applying section 432 of such Act.

(j) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

SEC. 1313. STATE DIRECTORY OF SERVICES.

(a) STATE PLAN REQUIREMENT.—Section 422(b) (42 U.S.C. 622(b)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following:

"(9) require the agency administering or supervising the administration of the plan, not less frequently than every 2 years, to—

"(A) compile a detailed directory of those service programs made available by the agency or by local child welfare agencies to families served by such agencies that are—

"(i) preplacement preventive services programs that are designed to help children at risk of foster care placement remain with their families;

"(ii) service programs designed to help children—

"(I) where appropriate, return to families from which they have been removed; or

"(II) be placed for adoption, with a legal guardian, or in some other planned, permanent living arrangement; or

"(iii) service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;

"(B) identify in such directory which of the programs referred to in subparagraph (A) provides specialized child welfare services to families in crisis due to substance abuse;

"(C) include in such directory such information as the Secretary may require by rule;

"(D) include in such directory, for each of such programs—

"(i) the name and address of the program and the agency or organization that administers the program;

"(ii) a description of the services offered by the program;

"(iii) the number of individuals the program is capable of serving at one time; and

"(iv) a description of the criteria for eligibility for services under the program, including any priorities with respect to who will receive such services;

"(E) arrange the information in the directory geographically; and

"(F) provide a copy of such directory to the Secretary and to all judges and other judicial administrators, and all State agencies, that are involved in child protection, foster care, and adoption cases.".

(b) EFFECTIVE DATE.—*The amendments made by subsection (a) shall take effect on October 1, 1993, and shall apply to payments under part B of title IV of the Social Security Act for fiscal year 1994 and to such payments for any succeeding fiscal year.*

SEC. 1314. REQUIRED PROTECTIONS FOR FOSTER CHILDREN.

(a) ELIMINATION OF INCENTIVE FUNDING MECHANISMS.—

(1) IN GENERAL.—

(A) REPEAL.—*Section 427 (42 U.S.C. 627) is hereby repealed.*

(B) CONFORMING AMENDMENT.—*Section 423(a) (42 U.S.C. 623(a)) is amended by striking "and in section 427".*

(2) STATE PLAN REQUIRED TO PROVIDE FOR FOSTER CARE PROTECTIONS OF REPEALED SECTION 427.—*Section 422(b) (42 U.S.C. 622(b)), as amended by sections 1313(a) and 1315(a) of this Act, is amended—*

(A) by striking "and" at the end of paragraph (9);

(B) by striking the period at the end of paragraph (10) and inserting "; and"; and

(C) by adding at the end the following:

"(11) provide that the State must—

"(A) conduct or have conducted an inventory of all children who have been in foster care under the responsibility of the State for a period of 6 months preceding the inventory, and determine or have determined—

"(i) the appropriateness of, and necessity for, the foster care placement;

"(ii) whether the child can or should be returned to the parents of the child or should be freed for adoption; and

"(iii) the services necessary to facilitate either the return of the child or the placement of the child for adoption or legal guardianship;

"(B) implement and operate, to the satisfaction of the Secretary—

"(i) a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child who is in foster care, or who has been in such care within the preceding 12 months, can be readily determined;

"(ii) a case review system (as defined in section 475(5)) for each child receiving foster care under the supervision of the State;

"(iii) a service program designed to help children—

"(I) where appropriate, return to families from which they have been removed; or

"(II) be placed for adoption, with a legal guardian, or in some other planned, permanent living arrangement; and

"(iv) a preplacement preventive services program designed to help children at risk of foster care placement remain with their families; and

"(C)(i) review or have reviewed State laws, State administrative and judicial procedures, and agency legal rep-

resentation in effect for children abandoned at or shortly after birth; and

"(ii) develop and implement such laws and procedures as the State determines are necessary to enable lasting permanent decisions to be made expeditiously with respect to the placement of such children;".

(3) CONFORMING AMENDMENTS.—

(A) Section 472(d) (42 U.S.C. 672(d)) is amended by striking "427(b)" and inserting "422(b)(11)".

(B) Section 425(a)(2) (42 U.S.C. 625(a)(2)) is amended by inserting "to comply with section 422(b)(11) or" before "to comply".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1994, and shall apply to payments under parts B and E of title IV of the Social Security Act for fiscal year 1995 and to such payments for any succeeding fiscal year.

(d) CONSTRUCTION OF SECTION.—This section and the amendments made by this section shall not be construed to permit any State to interrupt the provision of the foster care protections described in section 427 of the Social Security Act, as in effect before fiscal year 1995.

SEC. 1315. STATES REQUIRED TO REPORT ON MEASURES TAKEN TO COMPLY WITH THE INDIAN CHILD WELFARE ACT.

(a) STATE PLAN REQUIREMENT.—Section 422(b) (42 U.S.C. 622(b)), as amended by section 1313(a) of this Act, is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting "; and"; and

(3) by adding at the end the following:

"(10) contain a description, developed after consultation with tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1993, and shall apply to payments under part B of title IV of the Social Security Act for fiscal year 1994 and to such payments for any succeeding fiscal year.

SEC. 1316. REPORTS ON CHILD WELFARE SERVICES AND EXPENDITURES.

(a) POST-EXPENDITURE REPORTS.—

(1) IN GENERAL.—Part B of title IV (42 U.S.C. 620 09628), as amended by section 1331(a) of this Act, is amended by adding at the end the following:

"SEC. 429A. REPORT ON EXPENDITURES.

"(a) PREPARATION.—Each State shall prepare annual reports on the services provided with funds paid under this part (other than under section 434(a)(2)) during the most recently completed fiscal year, which shall be in such form and contain such information as the State finds necessary to—

"(1) provide an accurate description of such services;

"(2) secure a complete record of the purposes for which the funds were spent; and

"(3) enable a determination of the extent to which the funds were spent in a manner consistent with the information provided by the State purusant to section 422(b)(5).

"(b) DISSEMINATION.—Not later than the date prescribed by the Secretary as the due date for each report required by subsection (a), each State shall—

"(1) transmit to the Secretary a copy of each such report;

"(2) make copies of each such report available for public inspection in the State; and

"(3) provide copies of each such report, upon request, to any interested public agency, which may provide to the Congress the views of such agency on any such report.

"(c) ESTABLISHMENT OF UNIFORM DEFINITIONS.—The Secretary shall, to the extent feasible, establish uniform definitions of services for use by the States in preparing the reports required by subsection (a) of this section, taking into consideration the uniform definitions established for the reports required by section 2006, and shall take such other steps as may be necessary or appropriate to ensure that compliance with this section will not be unduly burdensome on the States.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 1993, and shall apply to expenditures under State plans under part B of title IV of the Social Security Act in or after fiscal year 1994.

(b) COMPARATIVE FINANCIAL CONTRIBUTION REPORTS.—

(1) IN GENERAL.—Section 422(b) (42 U.S.C. 622(b)), as amended by sections 1313(a), 1315(a), and 1314(a) of this Act, is amended—

(A) by striking "and" at the end of paragraph (10);

(B) by striking the period at the end of paragraph (11) and inserting "; and"; and

(C) by adding at the end the following:

"(12) include information for the fiscal year second preceding the fiscal year covered by the plan, in such form as the Secretary may prescribe by regulation, on—

"(A) the aggregate amount expended by the State and the political subdivisions thereof for the provision of child welfare services (other than foster care maintenance payments and adoption assistance payments), broken down in a manner that shows the extent to which such amount was expended from funds provided by each of Federal, State, or local sources; and

"(B) the aggregate amount expended by the State and the political subdivisions thereof for foster care maintenance payments and adoption assistance payments, broken down in a manner that shows the extent to which such amount was expended from funds provided by each of Federal, State, or local sources.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to State plans under part B of title IV of the Social Security Act for fiscal year 1994 and to such plans for any succeeding fiscal year.

(3) REPORTS TO THE CONGRESS.—Section 422 (42 U.S.C. 622) is amended by adding at the end the following:

"(c) The Secretary shall annually transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a summary of the information received from States pursuant to subsection (b)(12), and shall make available to the public copies of the summary at a charge equal to the cost of printing.".

SEC. 1317. INVOLVEMENT OF PRIVATE PARTIES IN THE DEVELOPMENT OF STATE PLANS.

(a) IN GENERAL.—Section 422(b) (42 U.S.C. 622(b)), as amended by sections 1313(a), 1315(a), 1314(a), and 1316(b)(1) of this Act, is amended—

(1) by striking "and" at the end of paragraph (11);

(2) by striking the period at the end of paragraph (12) and inserting "; and"; and

(3) by adding at the end the following:

"(13) provide for the involvement and use of the expertise of nonprofit organizations, and relevant experts, involved in the delivery of services to children and families, and consumers, in the development of the plan.".

SEC. 1318. COMPREHENSIVE SERVICE PROJECTS.

(a) COMPREHENSIVE SERVICE PROJECTS.—

(1) IN GENERAL.—Title IV (42 U.S.C. 601 09687) is amended by inserting after part B the following:

"PART C—COMPREHENSIVE SERVICE PROJECTS

"SEC. 441. COMPREHENSIVE SERVICE PROJECTS.

"(a) IN GENERAL.—

"(1) PURPOSE.—The purpose of this section is to grant not more than 3 States the flexibility and resources necessary to develop comprehensive and coordinated services designed—

"(A) to preserve and strengthen families with children at risk of placement outside their home;

"(B) to reunite children with their families expeditiously if an out-of-home placement is found to be necessary; and

"(C) to place children in adoptive homes or other permanent arrangements in a timely fashion if reunification with their families is not appropriate.

"(2) METHOD.--The method of this section is to permit any State to apply to the Secretary for permission—

"(A) to conduct a comprehensive service project in accordance with this section in such area or areas of the State as the State may select; and

"(B) to suspend certain requirements of parts B and E with respect to the activities of the State in such area or areas during the project.

"(3) ENTITLEMENT.—For payments to which States authorized to conduct projects under this section are entitled under this part, there shall be available to the Secretary for each fiscal year an amount equal to 10 percent of the aggregate of the amounts that would have been paid to such States under section 423 for the fiscal year, and the amounts that would have been paid to such States under section 434 for the fiscal

year, if the Secretary had approved the State plans of such States under part B for the fiscal year and had not authorized such States to conduct projects under this section for the fiscal year.

"(b) APPLICATIONS.—Not later than 3 months before the fiscal year in which a State desires to commence a comprehensive services project under this section, the State may submit to the Secretary an application to conduct the project which shall contain the following:

"(1) A plan and a timetable for assessing by the end of the fiscal year—

"(A) whether procedures and policies of the child welfare agency of the State, or of the area or areas of the State in which the project is to be conducted, provide for the coordinated delivery of services to children and their families, and the specific barriers that must be overcome to ensure such coordination;

"(B) the service needs of families in the area or areas of the State in which the project is to be conducted whose child or children are at imminent risk of placement outside their home or are in an out-of-home placement in the child welfare, juvenile justice, or mental health system;

"(C) specific service programs available in the area or areas of the State in which the project is to be conducted that address the service needs of such families; and

"(D) the extent to which common practices, policies, and procedures among the child welfare, juvenile justice, and mental health systems in the area or areas of the State in which the project is to be conducted govern the assessment of children and their families, the provision of case plans, the delivery of services to children and their families, and the periodic reviews of the services provided, particularly with regard to families whose child or children are at imminent risk of placement outside their home or are in an out-of-home placement;

"(2) a plan and a timetable for implementing, to the extent appropriate—

"(A) procedures and policies of the child welfare agency of the State, or of the area or areas of the State in which the project is to be conducted, that will result in the coordinated and efficient delivery of the range of child welfare services to families in the child welfare system;

"(B) a comprehensive services program designed to—

"(i) preserve and strengthen families with children at imminent risk of placement outside their home;

"(ii) reunite children with their families expeditiously if an out-of-home placement is found to be necessary;

"(iii) place children in adoptive homes or other permanent arrangements in a timely fashion if reunification with their families is not appropriate;

"(iv) meet the primary service needs of targeted families in the area or areas of the State in which the project is to be conducted who are in the child welfare,

juvenile justice, or mental health system and whose child or children are at imminent risk of placement outside their home or are in an out-of-home placement; and

"(v) include, at a minimum, access to substance abuse treatment, parenting education, health, mental health, crisis managment, and counseling services;

"(C) a common assessment tool for targeting which children and families who come to the attention of the child welfare, juvenile justice, and mental health systems will participate in the program described in subparagraph (B);

"(D) joint training of staff from the child welfare, mental health, and juvenile justice systems who will be involved in the program described in subparagraph (B);

"(E) a system for delivering services under the program described in subparagraph (B) to families targeted for the program which ensures a single point of entry and uses a unified case management approach, and thereby minimizes unnecessary and duplicative assessments and services;

"(F) an information system to track children and families across systems who participate in the program described in subparagraph (B), which provides data, not less frequently than annually, on the number of children and families served from each system and the nature of the services provided; and

"(G) a mechanism by which to ensure that relevant information on the service and treatment needs and outcomes of children and their families which is developed through their participation in the program described in subparagraph (B) is made available, as appropriate, to case managers and service providers in the relevant agencies who are charged with making service, placement, and other decisions with respect to the children and their families;

"(3) a statement of the specific outcomes the State expects by conducting the project, which shall include outcomes in at least the following areas—

"(A) an increase in the well-being of children;

"(B) a reduction in placements and expenditures for out-of-home care relative to what would have occurred otherwise;

"(C) an increase in the level and mix of preventive services available to families in the child welfare, juvenile justice, and mental health systems; and

"(D) an increase in coordination and cooperation among the child welfare, juvenile justice, and mental health agencies;

"(4) a specification of the area or areas of the State in which the project is to be conducted, in which must reside not fewer than 300,000 individuals in the aggregate at the time the application is submitted;

"(5) a certification that all cost savings resulting from the project will be used to provide child welfare services to families;

"(6) a certification that the State will provide the Secretary with such information about the project and the State programs carried out pursuant to parts B and E as the Secretary may request;

"(7) a certification that—

"(A) the State will not use any funds provided under this section to supplant any Federal, State, or local funds used for similar purposes;

"(B) the aggregate amount expended from State and local sources by the State and the political subdivisions thereof for the provision of child welfare services (excluding foster care maintenance payments and adoption assistance payments) during any fiscal year will be not less than the aggregate amount so expended during fiscal year 1992; and

"(C) the aggregate amount expended from State and local sources by the State and the political subdivisions thereof for the provision of child welfare services during any fiscal year will be not less than the aggregate amount so expended during fiscal year 1992;

"(8) a certification that the individual or agency referred to in section 422(b)(1)(A) shall have lead responsibility for the operation and administration of the project under this section;

"(9) a certification by the Governor of the State that project activities will be coordinated among the State child welfare, juvenile justice, and mental health agencies, and other appropriate State agencies; and

"(10) a list of those requirements of parts B and E which are to apply to the project, in addition to the requirements imposed by the provisions specified in subsection (c)(6)(A) of this section.

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) NOTIFICATION TO STATES OF APPLICATION REQUIREMENTS.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prepare and transmit to each State a detailed explanation of the requirements for conducting a project under this section.

"(2) CONSIDERATION OF APPLICATIONS.—The Secretary shall consider all applications (and amendments thereto) received from States desiring to conduct a project under this section.

"(3) AMENDMENT OF APPLICATIONS.—A State may, at any time and for any fiscal year, submit to the Secretary 1 or more amendments to any application submitted to the Secretary under this section.

"(4) APPROVAL OF APPLICATIONS.—

"(A) IN GENERAL.—The Secretary shall not approve any application of a State to conduct a project under this section, or any amendment thereto, that does not meet the requirements of this section to the satisfaction of the Secretary.

"(B) FREEDOM OF STATES TO SELECT AREAS IN WHICH TO CONDUCT THE PROJECT.—The Secretary may not, as a condition of approval of a State application to conduct a project under this section or of any amendment thereto, require the

State to select any particular area or areas of the State in which to conduct the project.

"(C) FREEDOM OF STATES TO SELECT PROVISIONS OF PARTS B AND E TO APPLY TO THE PROJECT.—The Secretary may not, as a condition of approval of a State application to conduct a project under this section or of any amendment thereto, require the project to comply with any provision of part B or E not specified in paragraph (6)(A) of this subsection.

"(5) AUTHORITY TO CONDUCT PROJECT; GRANT AUTHORITY.—If the Secretary approves the application of a State to conduct a project under this section, then—

"(A) the Secretary shall authorize the State to conduct the project in accordance with the approved application therefor and any approved amendments thereto, and the requirements of section 427, the provision of section 471(a)(1) requiring the State plan to provide for adoption assistance in accordance with section 473, paragraphs (8), (9), (10), (12), (13), (15), and (16) of section 471(a), and sections 472(h), 473, and 479 shall apply to the project; and

"(B) in lieu of receiving the funds that would otherwise be provided to the State for any fiscal year pursuant to sections 423, 434, and 474 (other than with respect to adoption assistance) with respect to the activities of the State in the area or areas of the State in which the project is to be conducted, the State shall be entitled to receive a grant, in accordance with subsection (d) of this section, for each fiscal year, from the amount allotted to the State for the fiscal year under section 421, the total amount allotted to the State for the fiscal year under section 432, the amount to which the State is entitled for the fiscal year under part E, and the amount made available pursuant to subsection (a)(3) of this section.

"(d) ANNUAL GRANTS.—

"(1) AMOUNT OF GRANT.—

"(A) IN GENERAL.—The amount of the grant to be paid under this subsection to a State for a fiscal year shall be the amount determined by the Secretary to be—

"(i) the sum of—

"(I) 110 percent of the aggregate of the amount that would have been paid to the State under section 423 for the fiscal year, and the total amount that would have been paid to such States under section 434 for the fiscal year, if the Secretary had approved the State plan under part B for the fiscal year and had not authorized the State to conduct a project under this section for the fiscal year; and

"(II) the aggregate of the expenses for which the State would properly have submitted a claim for reimbursement under section 474 (other than with respect to adoption assistance) for the fiscal year if the Secretary had approved the State plan under part E for the fiscal year and had not au-

thorized the State to conduct a project under this section for the fiscal year;

multiplied by

"(ii) the quotient equal to—

"(I) the number of children in the area or areas in which the project is to be conducted under this section with respect to whom the State would have made foster care maintenance payments under section 472 for the fiscal year if the Secretary had approved the State plan under part E for the fiscal year and had not authorized the State to conduct the project; divided by

"(II) the total number of children in the State with respect to whom the State would have so made such payments for the fiscal year.

"(B) CALCULATION OF GRANT AMOUNT.—The Secretary shall calculate the expenses for which a State would properly have submitted a claim for reimbursement under section 474 (other than with respect to adoption assistance) for a fiscal year by—

"(i) determining the amount paid to the State with respect to such expenses for the fiscal year immediately preceding the fiscal year in which the State commenced (or is to commence) the project under this section;

"(ii) adjusting such amount annually for inflation based on changes in the Consumer Price Index for all urban consumers for the most recent 12-month period for which data are available; and

"(iii) increasing such amount, to the extent the Secretary deems appropriate, by taking into account—

"(I) any estimate made by the State of the expenses for which the State would properly have submitted such a claim for reimbursement for the fiscal year;

"(II) the rate at which the number of children on whose behalf the Federal Government has reimbursed foster care maintenance payments made by States not participating in the project has recently increased (emphasizing those nonparticipating States which have similar child welfare programs and similar foster care caseload characteristics), as determined by the Secretary;

"(III) changes in State laws or procedures that have the effect of changing the rate at which children are placed in foster care or changing the costs of maintaining children in foster care;

"(IV) the amount (if any) by which—

"(aa) the national average number of children per State who, as of the end of the fiscal year immediately preceding the commencement of the project, have not attained the age of 18 years and were eligible for benefits under the respective State plan under part E (expressed as a percentage of the total population of chil-

dren in the respective State who have not so attained such age); exceeds

"(bb) the number of such children in the State (expressed as a similar percentage); and

"(V) other factors deemed appropriate by the Secretary.

"(2) NOTIFICATION TO STATES OF AMOUNT OF GRANTS.—The Secretary shall notify each State of the amount of the grant to be made to the State for a fiscal year under this subsection, not later than—

"(A) in the case of the first grant with respect to an approved application, the later of—

"(i) 45 days after the Secretary receives the application therefor; or

"(ii) August 1 of the fiscal year immediately preceding the fiscal year for which the grant is to be made; and

"(B) in any other case, August 1 of such immediately preceding fiscal year.

"(3) GRANTS TO BE PAID IN EQUAL QUARTERLY INSTALLMENTS.—The Secretary shall pay each grant under this subsection in equal quarterly installments.

"(e) PRESERVATION OF CERTAIN BENEFITS.—During the period in which a State is conducting a project under this section—

"(1) the State may not carry out the project in a manner which impairs the entitlement of any child to—

"(A) the foster care benefits the child would have received under a State plan approved under part E if the Secretary had approved the State plan under part E for the fiscal year and had not authorized the State to conduct a project under this section for the fiscal year; or

"(B) any other benefit to which the child is entitled by law; and

"(2) the State shall, for purposes of section 402(a)(20), be deemed to have in effect a State plan approved under part E.

"(f) REPORT ON EXPENDITURES.—

"(1) IN GENERAL.—Not later than April 1 of the fiscal year immediately following each fiscal year for which a State conducts a project under this section, the State shall prepare and submit to the Secretary a report on the funds expended under the project.

"(2) FORM AND CONTENT.—

"(A) IN GENERAL.—The report required by paragraph (1) shall be in such form and contain such information as the State finds necessary to—

"(i) accurately describe how the grant made under this section for the fiscal year was used;

"(ii) provide a complete record of how the grant funds were expended; and

"(iii) enable a determination of the extent to which the funds were spent in a manner consistent with the application therefor.

"(B) INCLUSION OF INFORMATION ON COMPARATIVE FINANCIAL CONTRIBUTIONS.—The report required by para-

graph (1) for any fiscal year after fiscal year 1993 shall include the information described in section 422(b)(12) for the 2nd preceding fiscal year.

"(g) ADMINISTRATIVE REMEDIES FOR UNSUCCESSFUL PROJECTS.—If the Secretary has determined that the State is not conducting the project in accordance with this section or is not making satisfactory progress toward the achievement of the plans of the State, the Secretary may—

"(1) provide technical assistance to the project;

"(2) require the State to take corrective action with respect to the project; or

"(3) after notice and opportunity for hearing, reduce the payments that would otherwise be due the State under this section by an amount which the Secretary determines is appropriate.

"(h) TERMINATION OF PROJECTS.—

"(1) IN GENERAL.—Any State authorized to conduct a project under this section shall discontinue the project at the end of a fiscal year—

"(A) if the State has notified the Secretary that the State intends to discontinue the project at the end of the fiscal year; or

"(B) if the Secretary has determined that the State is not conducting the project in accordance with this section or is not making satisfactory progress toward the achievement of the plans of the State, and the Secretary does not plan to take action under subsection (g) during the fiscal year with respect to the project.

"(2) EFFECT OF PROJECT TERMINATION.—On the discontinuance of a project of a State under this section, parts B and E shall apply with respect to the population of, and the activities of the State in, the area or areas of the State in which the project was conducted.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 1992.

(b) DEMONSTRATION PROJECTS TO IMPROVE COORDINATION OF SERVICES.

(1) IN GENERAL.—Part E of title IV (42 U.S.C. 670 09679) is amended by inserting after section 474 the following:

"SEC. 474A. DEMONSTRATION PROJECTS FOR THE COORDINATION OF CHILD AND FAMILY SERVICES.

"(a) In order to improve the coordination of child and family services, the Secretary shall authorize not more than 3 States to conduct demonstration projects, to be carried out in accordance with this section.

"(b) An application to conduct a demonstration project under this section submitted by the Governor of a State shall include a description of the measures to be employed to improve the coordination of the services and benefits provided by child and family services programs carried out under the State plan under this part with programs which provide services to families and children including some or all of the following programs and services:

"(1) The program of aid and services for needy families with children carried out under the State plan pursuant to part A.

"(2) The child support and spousal support enforcement program carried out under the State plan pursuant to part D.

"(3) The job opportunities and basic skills training program carried out under section 402(a)(19) and part F.

"(4) The special supplemental food program for woman, infants, and children (the WIC program) authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

"(5) The maternal and child health block grant program under title V.

"(6) Medical assistance furnished under the State plan approved under title XIX.

"(7) Drug treatment programs and other substance abuse programs.

"(8) Mental health services programs.

"(9) Juvenile justice programs.

"(10) Programs for developmentally disabled individuals.

"(11) Any additional services for children and families that the State determines necessary to meet the needs of all family members in order to carry out the purposes of this section that are approved by the Secretary.

"(c) A demonstration project conducted under this section may be conducted for a period of not more than 3 years.

"(d)(1) Each State that conducts a demonstration project authorized by the Secretary under this section shall, as a part of such demonstration project, conduct an evaluation of the effectiveness of the demonstration project in improving the coordination and the funding of child and family services.

"(2) Amounts expended by the State for the purposes of conducting an evaluation under this subsection shall be considered to be amounts expended for the proper and efficient administration of the State plan under this part.

"(e) Upon completion of a demonstration project under this section, each State shall submit a report to the Secretary concerning the results of the evaluation described in subsection (d).

"(f) Each State shall submit to the Secretary at such time as the Secretary may prescribe by regulation—

"(1) a description of administrative policies and laws of the Federal Government and the State or a political subdivision of the State, identified by the State as impediments to the coordination of the delivery of the child and family services described in subsection (b); and

"(2) a description of the measures that the State has taken or intends to take to eliminate or reduce impediments described in paragraph (1) that are attributable to administrative policies and laws of the State or a political subdivision of the State.

"(g) This section shall not be construed to authorize the Secretary or appropriate agency head to waive or modify any requirement of the programs described in subsection (b).".

(2) PAYMENTS TO STATES FOR DEMONSTRATION PROJECTS.—

(A) IN GENERAL.—Section 474(a) (42 U.S.C. 674(a)) is amended—

(i) by striking the period at the end of paragraph (4)(B)(ii) and inserting "; plus"; and

(ii) by adding at the end the following:

"(5) if such State is authorized to conduct a demonstration project pursuant to section 474A, 50 percent of so much of such expenditures (not to exceed $750,000 for each quarter during the period of such demonstration project) to carry out the demonstration project.".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply to expenditures made after September 30, 1992.

(c) REVIEW OF ADMINISTRATIVE POLICIES AND REGULATIONS.—(1) The Secretary of Health and Human Services, the Secretary of Agriculture, the Secretary of Education, and the Attorney General of the United States shall review the administrative policies and regulations relating to the funding and delivery of services for families and children (as described in section 474A(b) of the Social Security Act, as added by subsection (a) of this section) of the Department of Health and Human Services, the Department of Agriculture, the Department of Education, and the Department of Justice, respectively, to determine whether changes in such administrative policies and regulations may be made without statutory changes to improve the funding and delivery of such services.

(2) In conducting a review pursuant to paragraph (1), the heads of departments described in paragraph (1) shall consult with appropriate representatives of the governments of States and political subdivisions of States.

(3) Not later than July 1, 1993, the heads of the departments described in paragraph (1) shall collectively (or separately after consultation with the others) issue a report to the Congress that includes—

(A) recommendations for statutory changes, as well as changes in regulations and administrative policies, to improve the coordination of the funding and delivery of child and family services;

(B) a description of the technical assistance that the heads of the departments will make available to the States to improve the coordination of the funding and delivery of child and family services; and

(C) an analysis of the impediments identified pursuant to section 474A(f)(1) of the Social Security Act, as added by subsection (a) of this section, as such impediments relate to Federal policies and laws.

SEC. 1319. DISSOLVED ADOPTIONS.

(a) ELIGIBILITY FOR FOSTER CARE MAINTENANCE PAYMENTS.—Section 472 (42 U.S.C. 672) is amended—

(1) in subsection (b), by inserting "or (i)" after "subsection (a)"; and

(2) by adding at the end the following:

"(i) Any State with a plan approved under this part may make foster care maintenance payments under this part on behalf of a child—

"(1) with respect to whom such payments were previously made;

"(2) whose adoption has been set aside by a court;

"(3) who meets the requirements of paragraphs (1), (2), and (3) of subsection (a); and

"(4) who fails to meet the requirements of subsection (a)(4) but would meet such requirements if—

"(A) the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for such payments; and

"(B) the adoption were treated as having never occurred.".

(b) ELIGIBILITY FOR ADOPTION ASSISTANCE PAYMENTS.—Section 473(a) (42 U.S.C. 673(a)) is amended by adding at the end the following:

"(7) Any State with a plan approved under this part may enter into an adoption assistance agreement with the adoptive parents of any child with respect to whom the State may make foster care maintenance payments under section 472(i).".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1992, and shall apply to payments under part E of title IV of the Social Security Act in or after fiscal year 1993.

SEC. 1320. EXTENSION OF DEFINITION OF CHILDREN WITH SPECIAL NEEDS.

(a) IN GENERAL.—Section 473(c) (42 U.S.C. 673(c)) is amended to read as follows:

"(c)(1) For purposes of this section, a child shall not be considered a child with special needs unless—

"(A) the State determines that—

"(i) the child cannot or should not be returned to the home or the legal custody of the parents of the child;

"(ii) there exists a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps), or information available and known about the child indicating a high risk of medical conditions or physical, mental, or emotional handicaps, which makes it reasonable to conclude that the child cannot be placed for adoption without providing adoption assistance under this section or medical assistance under title XIX; and

"(iii) except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in their care as a foster child or a relative, a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without providing adoption assistance or medical assistance under title XIX; or

"(B) the State determines that the child—

"(i) has been adopted;

"(ii) immediately before the adoption was under the care and responsibility of the State agency administering or

supervising the administration of the State programs under this part or of a private nonprofit organization; and

"(iii) has a mental, physical, or emotional handicap that—

"(I) existed before the adoption but was not diagnosed until after the adoption; or

"(II) first manifests itself after the adoption but is congenital or was caused before the adoption.

"(2) Each State shall submit to the Secretary the factors and conditions used by the State to identify children with special needs for purposes of this section, and any modifications to such factors and conditions.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1993, and shall apply with respect to children who are adopted after September 30, 1993, and who become eligible for adoption assistance payments under section 473 of the Social Security Act in or after fiscal year 1994.

SEC. 1321. STUDY OF REASONABLE EFFORTS REQUIREMENT BY ADVISORY COMMITTEE.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall establish an Advisory Committee on Foster Care Placement (in this section referred to as the "Advisory Committee") to study and make recommendations concerning the implementation of the requirements imposed under section 471(a)(15) of the Social Security Act.

(b) MEMBERSHIP.—The Advisory Committee shall consist of not fewer than 9 members. In appointing persons to the Advisory Committee, the Secretary shall include representatives of the following types of organizations and agencies:

(1) Private, nonprofit organizations with an interest in child welfare (including such organizations that provide child protective services, foster care services, adoption services, or family support services).

(2) Agencies of States and political subdivisions thereof responsible for child protective services, foster care services, or adoption services.

(3) Judicial bodies of States and political subdivisions thereof responsible for adjudicating issues of family law (as defined and determined by the Secretary).

(c) TRAVEL EXPENSES.—While away from their homes or regular places of business and on the business of the Advisory Committee, the members of the Advisory Committee 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 employed intermittently in Government service.

(d) HIRING AUTHORITY.—The Advisory Committee may employ and fix the level of compensation for 1 individual.

(e) REPORT.—Not later than April 1, 1994, the Advisory Committee shall submit a report to the Secretary and to the Congress that includes legislative or other recommendations concerning the implementation of the requirements imposed under section 471(a)(15) of the Social Security Act.

SEC. 1322. ADOPTION EXPENSE DEDUCTION.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by redesignating section 221 as section 222 and by inserting after section 221 the following new section:

"SEC. 221. SPECIAL NEEDS ADOPTION EXPENSES DEDUCTION.

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year the amount of the qualified adoption expenses paid or incurred by the individual for such taxable year.

"(b) LIMITATIONS.—

"(1) MAXIMUM DOLLAR AMOUNT.—The aggregate amount of adoption expenses which may be taken into account under subsection (a) with respect to the adoption of a child shall not exceed $3,000.

"(2) DENIAL OF DOUBLE BENEFIT.—

"(A) IN GENERAL.—No deduction shall be allowable under subsection (a) for any expense for which a deduction or credit is allowable under any other provision of this chapter.

"(B) REIMBURSEMENTS.—If a taxpayer is reimbursed for any qualified adoption expenses for which a deduction was allowed under subsection (a), the amount of such reimbursement shall be includable in the gross income of the taxpayer in the taxable year in which such reimbursement was received.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED ADOPTION EXPENSES.—The term 'qualified adoption expenses' means reasonable and necessary adoption fees, court costs, attorneys fees, and other expenses which—

"(A) are directly related to the legal adoption of a child with special needs by the taxpayer,

"(B) are not incurred in violation of State or Federal law, and

"(C) are of a type eligible for reimbursement under the adoption assistance program under part E of title IV of the Social Security Act.

"(2) CHILD WITH SPECIAL NEEDS.—The term 'child with special needs' means any child determined by the State to be a child described in subparagraph (A) or (B) of section 473(c)(1) of the Social Security Act.".

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES DEDUCTIONS.—Subsection (a) of section 62 of the Internal Revenue Code of 1986 is amended by inserting after paragraph (13) the following new paragraph:

"(14) ADOPTION EXPENSES.—The deduction allowed by section 221 (relating to deduction for expenses of adopting a child with special needs).".

(c) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 221 and by inserting the following new items:

"Sec. 221. Special needs adoption expenses deduction.

"Sec. 222. Cross reference.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to adoptions occurring in taxable years beginning after December 31, 1992.

SEC. 1323. PERIODIC REEVALUATION OF FOSTER CARE MAINTENANCE PAYMENTS.

(a) IN GENERAL.—Section 471(a)(11) (42 U.S.C. 671(a)(11)) is amended to read as follows:

"(11)(A) provides for periodic review of the standards referred to in paragraph (10) to assure their continuing appropriateness; and

"(B) provides for the review, not less frequently than once every 3 years, of the amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness, and a report to the Secretary and the public on the results of such review at such time and in such form and manner as the Secretary may by regulation require, which contains, at a minimum—

"(i) a statement of the manner in which the foster care maintenance payment level is determined, including information on the cost of foster care with respect to which such payments are made;

"(ii) information with respect to the basic foster care maintenance payment level, whether such payment level includes an amount to cover the cost of clothing, and whether such payment level varies by the type of care or the special needs or age of the child, and if so, the payment levels for each special needs, care, or age category;

"(iii) if such payments are not made at a different rate for children with special needs who test positive for human immunodeficiency virus, have acquired immune deficiency syndrome, are addicted to drugs, or suffer from complications due to exposure to drugs or alcohol, the reasons therefor; and

"(iv) information on any limitations imposed by the State on adoption assistance payments levels;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1992, and shall apply to payments under part E of title IV of the Social Security Act for fiscal year 1993 and to such payments for any succeeding fiscal year.

SEC. 1324. CASE REVIEW SYSTEM REQUIREMENTS.

(a) ACCELERATED DISPOSITIONAL HEARING.—Section 475(5)(C) (42 U.S.C. 675(5)(C)) is amended by striking "eighteen months" and inserting "15 months".

(b) PERIODIC REVIEW OF CHILDREN FREE FOR ADOPTION.—Section 475(5)(B) (42 U.S.C. 675(5)(B)), as amended by section 1326(b) of this Act, is amended by inserting after "legal guardianship," the following: "and if the entity conducting the review finds that the child should be placed for adoption, the entity shall determine and document the measures needed to enhance the likelihood of making the child legally eligible for adoption and of finding an adoptive home for the child, and if the child is legally eligible for adoption, determine and document (I) the specific measures which have been

taken, and the specific measures which need to be taken, to make an adoptive placement, or (II) a finding that placement of the child in an adoptive family would be inappropriate,".

(c) MOST APPROPRIATE SETTING.—Section 475(5)(A) (42 U.S.C. 675(5)(A)) is amended by inserting "and most appropriate" after "(most family like)".

(d) CITIZEN VOLUNTEER INPUT.—Section 475(5) (42 U.S.C. 675(5)) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(3) by inserting at the end the following new subparagraph:

"(E) to the extent determined appropriate by the State, citizen volunteers may participate in making recommendations at either the court or administrative reviews described in subparagraph (B) or at the dispositional hearings described in subparagraph (C).".

(e) EFFECTIVE DATES.—

(1) ACCELERATED DISPOSITIONAL HEARING; PERIODIC REVIEW OF CHILDREN FREE FOR ADOPTION.—The amendments made by subsections (a) and (b) shall take effect on October 1, 1994, and shall apply to payments under part E of title IV of the Social Security Act for fiscal year 1995 and to such payments for any succeeding fiscal year.

(2) MOST APPROPRIATE SETTING.—The amendment made by subsection (c) shall take effect with respect to case reviews conducted on or after July 1, 1993.

(3) CITIZEN VOLUNTEER INPUT.—The amendments made by subsection (d) shall take effect on the date of the enactment of this Act.

SEC. 1325. HEALTH CARE PLANS FOR FOSTER CHILDREN.

(a) IN GENERAL.—Section 475(1)(C) (42 U.S.C. 675(1)(C)) is amended—

(1) in clause (i), by striking "and addresses" and inserting ", addresses, and telephone numbers",

(2) in clause (vii), by striking "and"; and

(3) by redesignating clause (viii) as clause (ix) and inserting after clause (vii) the following:

"(viii) a record indicating that the child's foster care provider was advised (where appropriate) of the child's eligibility for early and periodic screening, diagnostic, and treatment services under title XIX; and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to case plans established or reviewed on or after January 1, 1993.

SEC. 1326. PLACEMENT ACCOUNTABILITY.

(a) CASE PLAN PROVISIONS REQUIRED FOR CHILDREN IN OUT-OF-STATE FOSTER CARE PLACEMENTS.—Section 475(1) (42 U.S.C. 675(1)) is amended by inserting after subparagraph (C) the following:

"(D) In the case of a child receiving foster care maintenance payments under section 472 who is placed in a facility outside the State, a finding that—

"(i) efforts have been made to place the child in a facility in the State;

"(ii) the child needs services not available in the State;

"(iii) the placement is in the least restrictive (most family like) and most appropriate setting available, consistent with the best interests and the special needs of the child; and

"(iv) the placement has been approved by—

"(I) a court; or

"(II) a committee (such as a foster care review board), established by the State, that reviews placements outside the State and that, in addition to the appropriate State personnel, includes child advocates, parents, and other individuals the State deems appropriate.".

(b) STATUS OF CHILDREN IN OUT-OF-STATE FOSTER CARE PLACEMENTS TO BE JUDICIALLY REVIEWED ANNUALLY WITH THE CHILD PRESENT.—Section 475(5)(B) (42 U.S.C. 675(5)(B)) is amended—

(1) by striking "and" the 2nd place such term appears; and

(2) by adding at the end the following: "and in the case of a child who is placed by a State in a foster care facility outside the State, the status of the child shall be reviewed by a court, not less frequently than annually, with the child present, unless the court determines that due to the age or condition of the child, or for some other good cause, the presence of the child would be detrimental to the child or would not accomplish a useful purpose,".

(c) STATE PLAN REQUIREMENT.—Section 471(a) (42 U.S.C. 671(a)) is amended—

(1) by striking "and" at the end of paragraph (16);

(2) by striking the period at the end of paragraph (17) and inserting "; and"; and

(3) by adding at the end the following:

"(18) provides that the State agency must ensure that any facility outside the State in which a child eligible for foster care maintenance payments under section 472 is placed has certified to the originating State that the facility meets the standards of the originating State which apply to child care facilities, or the standards recommended by national organizations concerned with standards for such facilities, including standards of the types described in paragraph (10).".

(d) COLLECTION OF DATA ON NUMBERS OF CHILDREN IN OUT-OF-STATE FOSTER CARE PLACEMENTS.—Section 479(c)(3)(C) (42 U.S.C. 679(c)(3)(C)) is amended—

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

(2) by adding at the end the following:

"(iii) children placed in foster care outside the State, and".

(e) EFFECTIVE DATES.—

(1) CASE PLAN, CASE REVIEW SYSTEM, AND STATE PLAN CHANGES.—The amendments made by subsections (a), (b), and (c) shall take effect on October 1, 1993 and shall apply to payments under part E of title IV of the Social Security Act for expenditures made in fiscal years 1994, 1995, and 1996.

(2) DATA COLLECTION.—The amendments made by subsection (d) shall take effect on October 1, 1994 and shall apply to payments under part E of title IV of the Social Security Act for expenditures made in or after fiscal year 1995.

(f) STUDY OF REASONS FOR MAKING OUT-OF-STATE FOSTER CARE PLACEMENTS.—In order for a State to receive payments under section 474 of the Social Security Act for amounts expended after fiscal year 1994 for foster care maintenance payments under section 472 of such Act made with respect to children placed by the State in foster care outside the State, the State shall, by the end of such fiscal year, conduct and submit to the Secretary a study designed to identify—

(1) the number of such children and the characteristics (if any) common to such children; and

(2) the reasons why such children were not placed in foster care in the State.

SEC. 1327. INDEPENDENT LIVING.

(a) ACCUMULATION OF ASSETS.—Section 477 (42 U.S.C. 677) is amended—

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

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

"(i) Notwithstanding any other provision of this title or of title XIX, with respect to a child who is included in a program established under subsection (a), an amount of the assets of the child which would otherwise be regarded as resources for the purposes of determination of eligibility for programs under this title or title XIX may be disregarded for the purpose of allowing such child to establish a household. Such amount may not exceed an amount determined by the State agency responsible for the administration of the program as reasonable for the purpose of establishing a household.".

(b) PERMANENT EXTENSION.—Section 477 (42 U.S.C. 677) is amended—

(1) in subsection (a)(1), by striking the 3rd sentence;

(2) in subsection (c), by striking "of the fiscal years 1988 through 1992" and inserting "succeeding fiscal year";

(3) in subsection (e)(1)(A), by striking "each of the fiscal years 1987 through 1992" and inserting "any fiscal year".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1992, and shall apply to payments under part E of title IV of the Social Security Act for fiscal year 1993 and payments made under such part for any succeeding fiscal year.

SEC. 1328. ELIMINATION OF FOSTER CARE CEILINGS AND OF AUTHORITY TO TRANSFER UNUSED FOSTER CARE FUNDS TO CHILD WELFARE SERVICES PROGRAMS.

(a) REPEAL.—Subsections (b) and (c) of section 474 (42 U.S.C. 674 (b) and (c)) are hereby repealed.

(b) CONFORMING AMENDMENTS.—Section 474 (42 U.S.C. 674) is amended—

(1) in subsection (d)—

(A) by striking "subsections (a), (b), and (c)" and inserting "subsection (a)"; and

(B) by striking "the provisions of such subsections" and inserting "subsection (a)"; and

(2) by redesignating subsection (d) as subsection (b).

(c) EFFECTIVE DATE.—The amendments and repeal made by this section shall take effect on October 1, 1992, and shall apply to payments under part E of title IV of the Social Security Act for fiscal year 1993 and to such payments for any succeeding fiscal year.

SEC. 1329. REGULATIONS FOR TRAINING OF AGENCY STAFF AND OF FOSTER AND ADOPTIVE PARENTS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish an advisory committee which shall include representatives of—

(1) nonprofit organizations with an interest in child welfare (including organizations that train professional social workers in the field of child welfare services); and

(2) organizations representing State and local governmental agencies with responsibility for foster care and adoption services.

(b) FINAL REGULATIONS.—Not later than 15 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall, after consultation with the advisory committee established under subsection (a), issue final regulations setting forth detailed guidelines to assist States in using Federal matching funds authorized to be provided under section 474(a)(3) of the Social Security Act for the purpose of training for—

(1) individuals who are employed, or preparing for employment, by the agencies with responsibility for administering the foster care and adoption assistance programs of the States under part E of title IV of such Act; and

(2) foster and adoptive parents.

(c) TRAINING FOR EMPLOYMENT IN CHILD WELFARE AGENCIES.—In order to improve the capacity of State and local child welfare agencies to administer the programs authorized under parts B and E of title IV of the Social Security Act and to provide services to families and children, the Secretary of Health and Human Services shall, not later than October 1, 1993, develop and publish a model staff recruitment, training, and staff retention program for use by such agencies.

SEC. 1330. FOSTER AND ADOPTIVE PARENT TRAINING.

Section 8006(b) of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 674 note; 103 Stat. 2462) is amended by striking ", and before October 1, 1992".

SEC. 1331. CHILD WELFARE TRAINEESHIPS.

(a) IN GENERAL.—Part B of title IV (42 U.S.C. 620 09628) is amended by inserting after section 428 the following:

"SEC. 429. CHILD WELFARE TRAINEESHIPS.

"(a) The Secretary shall approve an application for a grant to a public or nonprofit institution of higher learning to provide traineeships with stipends under section 426(a)(1)(C), only if the application—

"(1) provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a 'recipient') shall enter into an agreement with the institution of higher learning under which the recipient shall agree—

"(A) to participate in onsite training at a public or private child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;

"(B) to be employed for a period of years equivalent to the period of the traineeship in a public or private nonprofit child welfare agency in any State after completing the postsecondary education for which the traineeship was awarded (within such period of time as is determined by the Secretary by regulation);

"(C) to provide the institution of higher learning and the Secretary with evidence of compliance with subparagraphs (A) and (B); and

"(D) in the event that the conditions of subparagraph (A) or (B) are not complied with (except as provided in the exceptions to repayment provisions described in subsection (b)), to repay to the Secretary all or part of the amount of the stipend, plus interest, and if applicable, reasonable collection fees (in compliance with regulations that the Secretary shall promulgate);

"(2) provides that an agreement entered into with a recipient shall fully disclose the terms and conditions under which the traineeship with stipend is granted; and

"(3) provides assurances that the institution of higher learning shall—

"(A) provide appropriate support and supervision of recipients;

"(B) enter into agreements with child welfare agencies for the onsite training of recipients;

"(C) develop and implement a curriculum in the field of child welfare services that—

"(i) incorporates the most recent information concerning best practices for the delivery of child welfare services; and

"(ii) incorporates information relating to clause (i) supplied to the institution through consultation with child welfare agencies;

"(D) permit a student who is employed in the field of child welfare services (at the time such student applies for a traineeship) to apply for a traineeship with a stipend if such traineeship furthers the student's progress towards the completion of degree requirements; and

"(E) develop and implement a system that tracks for a period of 3 years, beginning on the date of completion of any student of a child welfare services program of study, the employment record of such student in the field of child welfare services (for the purpose of determining the percentage of students who secure employment in the field of child welfare services and remain employed in such field).

"(b) A recipient shall not be considered in violation of the agreement entered into pursuant to subsection (a)(1) during any period in

which the recipient satisfies repayment exceptions that may be prescribed by the Secretary by regulation.".

(b) CONFORMING AMENDMENT.—*Section 426(a)(1)(C) (42 U.S.C. 626(a)(1)(C)) is amended by inserting "described in section 429" after "including traineeships".*

(c) APPLICABILITY.—*The amendments made by this section shall apply to grants awarded on or after April 1, 1993.*

SEC. 1332. PUBLICATION OF PROGRAM DATA.

(a) IN GENERAL.—*Section 479 (42 U.S.C. 679), as amended by section 1334(b)(2) of this Act, is amended by adding at the end the following:*

"(e) Not later than January 31 of each year, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and shall make available to the public at a charge equal to the cost of printing, a report containing the following information, at least for the most recent fiscal year for which such information is available:

"(1) A detailed summary, and a breakdown by State, of—

"(A) the expenditures of each State for the program during the fiscal year for each of the programs funded under part B, part C, or this part, broken down in a manner that shows the extent to which such expenditures were made from funds provided by each of Federal or State sources; and

"(B) to the extent available, the number of children or families participating in each of such programs.

"(2) Information detailing the schedule and result of the reviews conducted under the regulatory review system established in accordance with section 491, including information on payments withheld, reduced, or sought, or intended by the Secretary to be withheld, reduced, or sought, from each State as a result of such reviews.

"(3) The information described in clauses (ii) and (iii) of section 471(a)(11)(B).

"(4) An analysis of the services provided with funds made available under part B.

"(5) A listing and summary of ongoing research, training, and demonstration projects funded under section 426 or 438 of this Act or under sections 1335 through 1338 of the Revenue Act of 1992, and the expected date for the publication of any evaluations of, conclusions based on, or analyses of such projects.

"(6) Any other information the Secretary deems useful to monitor the operations of the program.".

(b) EFFECTIVE DATE.—*The amendment made by subsection (a) shall take effect on October 1, 1993.*

SEC. 1333. REVIEW OF CHILD WELFARE ACTIVITIES.

(a) NEW SYSTEM FOR REVIEWING CHILD WELFARE ACTIVITIES.—

(1) IN GENERAL.—*Title IV (42 U.S.C. 601 09687) is amended by adding at the end the following:*

"PART G—CHILD WELFARE REVIEW SYSTEM

"SEC. 491. CHILD WELFARE REVIEW SYSTEM.

"(a) ESTABLISHMENT BY REGULATION.—

"(1) IN GENERAL.—The Secretary shall establish, by regulation, a system for—

"(A) the review of each child welfare program of each State for the purposes of—

"(i) assessing whether the program is being carried out as required by part B or E, whichever is applicable;

"(ii) identifying any area in which the program is not being carried out as so required, and the degree to which the program is not being so carried out; and

"(iii) identifying the circumstances under which financial penalties shall be imposed in cases of failure to comply with part B or E, whichever is applicable, and imposing financial penalties proportional to the degree of such failure to comply, unless action is taken to correct such failure; and

"(B) the provision of technical assistance to any such program.

"(2) STATE CHILD WELFARE PROGRAMS DEFINED.—As used in this section, the term 'child welfare programs' means, with respect to a State—

"(A) all activities engaged in by, or under contract with, the State for the purpose of carrying out the State plan for child welfare services under part B; and

"(B) all activities engaged in by, or under contract with, the State for the purpose of carrying out the State plan approved by the Secretary under part E.

"(b) CONTENT OF REGULATIONS.—The regulations required by subsection (a) shall—

"(1) require each State child welfare program to be reviewed on a fiscal year basis to determine—

"(A) whether and, where appropriate, the degree to which, the program complies with the requirements of the applicable State plan referred to in subsection (a)(2); and

"(B) the extent to which the amounts claimed to have been expended by the State for foster care maintenance payments under section 472 and for adoption assistance payments under section 473 are eligible for reimbursement under part E;

"(2) specify the criteria that are to be used to assess, with respect to each subparagraph of paragraph (1)—

"(A) whether each program has complied with the requirements that apply to the matters described in such subparagraph; and

"(B) the degree of such compliance;

"(3) require that the procedures used to determine whether, and, where appropriate, the degree to which a State child welfare program is carried out in compliance with the applicable requirements—

"(A) enable a timely review of all matters referred to in paragraph (1);

"(B) include the sampling of foster care maintenance payments made under section 472, adoption assistance payments made under section 473, and payments for such other activities under the State plan approved under part E as the Secretary deems appropriate;

"(C) be applied uniformly to each State child welfare program; and

"(D) be periodically reviewed and, if necessary, revised to take into account information from completed reviews under such regulations;

"(6) provide that a deficiency or error in a State child welfare program is not to be taken into account if the deficiency or error is—

"(A) due to the State's failure to properly implement changes in Federal statute within the 6-month period beginning with the date the statute takes effect or, if later, within the 6-month period beginning with the date the regulation is issued if the regulation is reasonably necessary to construe or apply the statute;

"(B) due to the State's reliance upon and correct use of erroneous information provided by the Secretary about matters or fact;

"(C) due to the State's reliance upon and correct use of written statements of Federal policy provided to the State by the Secretary; or

"(D) of a technical nature and does not materially affect the performance of the program or the protection of children who are in, or at risk of being placed in, foster care;

"(7) establish the method by which a financial penalty is to be calculated, with respect to each subparagraph of subsection (b)(1), if there is a failure by a State child welfare program to comply with the requirements that apply to the matters described in such subparagraph;

"(8) provide that the financial penalty to be imposed for a failure described in paragraph (7)—

"(A) reflect the degree of the failure; and

"(B) to the extent appropriate, be based on the formula used to determine the amount of a disallowance under section 408(f); and

"(9) be developed in consultation with representatives of State agencies administering the programs under parts B and E.

"(c) FREQUENCY OF REVIEWS.—Not less frequently than once every 3 years, the Secretary shall complete a review of each State child welfare program for the most recently completed fiscal year under the regulatory review system established in accordance with this section.

"(d) EFFECTS OF DETERMINATIONS OF NONCOMPLIANCE.—

"(1) NOTIFICATION.—The Secretary shall provide timely notification to any State of any determination under this section that a State child welfare program has failed, with respect to

any subparagraph of subsection (b)(1), to comply with the requirements that apply to the matters described in such subparagraph, and shall include with such notice—

"(A) the basis for the determination; and

"(B) the amount of the financial penalty (if any) imposed on the State under the regulations issued under this section.

"(2) DETERMINATION OF PENALTIES.—The regulations setting forth the conditions under which penalties are to be imposed, and the amount of such penalties shall specify, where appropriate—

"(A) thresholds beyond which a State child welfare program will be determined to have failed to comply with Federal requirements, and thresholds beyond which a failure of such a program to comply with such requirements will be determined to be substantial; and

"(B) the circumstances under which a program under part B shall not be subject to penalty (or such penalty shall be withheld or reduced) if the State has developed and followed an approved corrective action plan.

"(g) ADMINISTRATIVE REVIEW.—

"(1) IN GENERAL.—Within a reasonable time after a State is notified of a determination under this section that there is a failure of a State child welfare program to comply with applicable requirements, and of the amount of the financial penalty imposed on the State under this section with respect to such failure, the State may appeal the determination and the imposition of the penalty (in whole or in part) to the Departmental Appeals Board established in the Department of Health and Human Services, by filing an appeal with the Board.

"(2) AUTHORITY OF BOARD TO ADJUST PENALTY.—The Board may adjust the amount of the financial penalty to be imposed under this section, taking into account—

"(A) the amount of the financial penalty imposed by the Secretary;

"(B) the proportionality of the penalty to the degree of the failure; and

"(C) where appropriate, whether the failure materially affected the protection of children who are in, or at risk of being placed in, foster care.

"(h) JUDICIAL REVIEW.—

"(1) IN GENERAL.—Within a reasonable time after a decision by the Departmental Appeals Board with respect to the imposition of a penalty under the regulatory review system established in accordance with this section, the State may obtain judicial review of the decision by filing an action in—

"(A) the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the State child welfare program which is the subject of the decision is located; or

"(B) the United States District Court for the District of Columbia.

"(2) PROCEDURAL RULES.—The district court shall review the decision of the Board on the record established in the proceedings before the Board, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5, United States Code.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(b) FINAL REGULATIONS.—

(1) DEADLINE FOR ISSUANCE.—Not later than January 1, 1994, the Secretary of Health and Human Services shall issue, in final form, the regulations required by section 491 of the Social Security Act.

(2) APPLICABILITY.—Such regulations shall apply to conduct occurring on or after October 1, 1994.

(c) CONFORMING AMENDMENT.—

(1) IN GENERAL.—Section 471(b) (42 U.S.C. 671(b)) is amended by striking all that follows the first sentence.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 1994.

(d) ALL STATE CHILD WELFARE PROGRAMS TO BE REVIEWED BY THE END OF FISCAL YEAR 1998.—Not later than September 30, 1998, the Secretary of Health and Human Services shall complete at least one review of each State child welfare program (as defined in section 491(a)(2) of the Social Security Act) under the regulatory review system established in accordance with such section.

(e) MORATORIUM ON COLLECTING DISALLOWANCES UNDER PART E.—The Secretary of Health and Human Services shall not, before October 1, 1993, reduce any payment to, withhold any payment from, or seek any repayment from, any State under part E of title IV of the Social Security Act by reason of a determination made in connection with any on-site Federal financial review, or any audit conducted by the Inspector General using similar methodologies.

(f) MORATORIUM ON COLLECTING DISALLOWANCES UNDER PART B.—Section 10406 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 627 note; 103 Stat. 2490) is amended—

(1) by striking "1991" and inserting "1993";

(2) by striking "triennial";

(3) by striking "1992" and inserting "1994"; and

(4) in the section heading—

*(A) by striking "**TRIENNIAL**"; and*

*(B) by striking "**1991**" and inserting "**1993**".*

(g) PAYMENT OF STATE CLAIMS FOR FOSTER CARE AND ADOPTION ASSISTANCE.—

(1) IN GENERAL.—Section 474 (42 U.S.C. 674), as amended by section 1328 of this Act, is amended by adding by adding at the end the following:

"(c) The Secretary shall pay any State claim for reimbursement for expenditures pursuant to subsection (a) within 90 days after the receipt of the claim unless the Secretary issues a deferral or a disallowance of the claim before the end of such 90-day period.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act, and shall apply to actions taken before, on, or after such date.

SEC. 1334. AUTOMATED SYSTEMS.

(a) ENHANCED MATCH.—

(1) PAYMENTS TO STATES.—

(A) IN GENERAL.—Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended—

(i) by striking "and" at the end of subparagraph (B);

(ii) by redesignating subparagraph (C) as subparagraph (E); and

(iii) by inserting after subparagraph (B) the following:

"(C) 90 percent of so much of such expenditures as are for the planning, design, development, or installation of statewide mechanized data collection and information retrieval systems (including 90 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such systems—

"(i) meet the requirements imposed by regulations promulgated pursuant to section 479(b)(2);

"(ii) to the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

"(iii) to the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part A (for the purposes of facilitating the verification of the eligibility of foster children); and

"(iv) are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under the State plan approved under part B or the State plan approved under this part; and

"(D) 50 percent of so much of such expenditures as are for the operation of the statewide mechanized data collection and information retrieval systems referred to in subparagraph (C); and".

(B) TREATMENT OF STATE EXPENDITURES FOR DATA COLLECTION AND INFORMATION RETRIEVAL SYSTEMS.—Section 474 (42 U.S.C. 674), as amended by sections 1328 and 1333(g)(1) of this Act, is amended by adding at the end the following:

"(d) The Secretary shall treat as necessary for the proper and efficient administration of the State plan approved under this part all expenditures of a State that are necessary in order for the State to plan, design, develop, install, and operate data collection and information retrieval systems described in subsection (a)(3)(C), without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under this part.".

(C) CONFORMING AMENDMENT.—Section 473(a)(6)(B) (42 U.S.C. 673(a)(6)(B)), as amended by section 9102(b) of this

Act, is amended by striking "474(a)(3)(C)" and inserting "474(a)(3)(E)".

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to payments under part E of title IV of the Social Security Act for expenditures made during the 3-year period that begins 6 months after the date of the enactment of this Act.

(2) TERMINATION OF ENHANCED MATCH.—

(A) IN GENERAL.—Section 474(a)(3)(C) (42 U.S.C. 674(a)(3)(C)), as amended by paragraph (1)(A)(iii) of this subsection, is amended by striking "90" each place such term appears and inserting "50".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect on September 30, 1995.

(C) CONSTRUCTION.—The amendment made by subparagraph (A) of this paragraph shall not be construed to affect any right, entitlement, or duty granted or imposed by, or arising by reason of, the amendments made by paragraph (1).

(b) ESTABLISHMENT OF GROUP TO ADVISE THE SECRETARY ON THE PLANNING AND IMPLEMENTATION OF AUTOMATED SYSTEMS.—

(1) IN GENERAL.—Section 479 (42 U.S.C. 679) is amended by adding at the end the following:

"(d) The Secretary shall establish a work group to advise the Secretary on the planning and implementation of the system to be used for the collection of data relating to adoption and foster care in the United States. Such group shall include representatives of—

"(1) organizations described in subsection (a)(4)(B)(ii); and

"(2) other appropriate groups.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

SEC. 1335. RESEARCH AND EVALUATIONS.

(a) FOSTER CARE EVALUATIONS; LONGITUDINAL CHILD WELFARE DATA BASES; STUDIES OF CHILD WELFARE POPULATION DYNAMICS.—Section 426(b) (42 U.S.C. 626(b)) is amended to read as follows:

"(b) RESEARCH AND EVALUATION PROJECTS.—

"(1) FOSTER CARE EVALUATIONS.—In order to promote more appropriate and effective foster care for children in need of long-term foster care, the Secretary shall, directly or under contract with 1 or more independent research organizations, and in accordance with such criteria as the Secretary deems appropriate, evaluate the effects of alternative foster care arrangements and services on the well-being of children who—

"(A) have little prospect of being reunited with their families, or of being adopted; and

"(B) represent a challenging group of foster children who are in need of specialized services or care.

"(2) LONGITUDINAL CHILD WELFARE DATA BASES; STUDIES OF CHILD WELFARE POPULATION DYNAMICS.—

"(A) CONTRACT AUTHORITY.—In order to develop more appropriate and effective intervention strategies with respect to children and their families who are referred or reported to the child welfare system, the Secretary shall, di-

rectly or under contract with 1 or more independent research organizations—

"(i) plan, design, develop, and implement not more than 4 child welfare data bases that provide detailed longitudinal information on children and their families to whom the local public child welfare system provides services, from the time such children are first referred or reported to such system; and

"(ii) using data from such data bases, conduct such studies on children and their families served by public child welfare systems, as the Secretary deems appropriate, including a study of the extent to which a lack of affordable housing is a factor in the placement of children in foster care, and (at the option of the Secretary) studies of—

"(I) the movements of subgroups of children and their families into, through, and out of the various parts of the child welfare system;

"(II) the characteristics of those children or families who stay in the system or various parts of the system for short time periods versus those who stay for long time periods;

"(III) the type and intensity of, and effectiveness of, services that families receive in the system;

"(IV) the frequency of contact between and among foster children, their parents, and caseworkers;

"(V) the factors associated with repeat occurrences of child abuse and neglect, and other outcomes; and

"(VI) the condition of children in the system in areas that may include educational performance, health, and personal and social adjustment.

"(B) AGREEMENTS WITH STATES.—

"(i) IN GENERAL.—Not later than October 1, 1993, the Secretary shall enter into agreements with not more than 4 States or localities to—

"(I) participate in the planning, design, development, and operation of a longitudinal child welfare data base described in subparagraph (A) in the participating State or locality involved; and

"(II) reimburse such States or localities for expenditures incurred with respect to such activities.

"(ii) PAYMENTS TO STATES.—Under each such agreement, the Secretary shall be obligated to pay the State or locality participating in the establishment of the data base—

"(I) from amounts available for payments under section 474(a)(3)(C), 70 percent of such expenditures as are incurred during the 3-year period beginning on October 1, 1993, for the planning, design, development, installation, or operation of the data base; and

"(II) from amounts available for payments under section 474(a)(3)(D), 50 percent of such expenditures as are incurred after the end of such 3-year period for the operation of the data base.

"(C) DATA BASE REQUIREMENTS.—The Secretary shall ensure that each longitudinal data base established under this paragraph—

"(i) includes information on the receipt, by children and their families in the data base, of particular child welfare services, including—

"(I) child protective services;

"(II) services designed to strengthen and preserve families;

"(III) foster care and adoption services; and

"(IV) other services made available by the child welfare system;

"(ii) to the extent feasible, includes information on the receipt of services, or the placement of children, through the public mental health or juvenile justice agencies;

"(iii) includes only data that are reliable and developed using uniform definitions and methodologies that are consistent over time and, to the extent feasible, among jurisdictions; and

"(iv) to the extent appropriate, is implemented with the State data collection and information retrieval systems described in section 474(a)(3)(C).".

(b) OTHER RESEARCH AND EVALUATIONS.—

(1) STUDY OF RISKS TO FOSTER CARE WORKERS; NATIONAL WORKLOAD STUDY; EVALUATION OF FOSTER PARENT RECRUITMENT, TRAINING, AND EDUCATION.—The Secretary may—

(A) conduct a study to assess the prevalence and nature of risks to the safety of employees of child welfare systems, under which empirical information shall be obtained on—

(i) the incidence of violence toward, or harassment of, such employees;

(ii) the types of such employees exposed to the greatest risk;

(iii) the types of harm threatened or inflicted;

(iv) the characteristics of perpetrators of such violence or threats;

(v) the most dangerous child welfare settings; and

(vi) the differences (if any) between urban and rural areas in the above respects;

(B)(i) enter into a contract with an organization or organizations with demonstrated experience in the field of workload measurement for human service agencies—

(I) under which the organization is to conduct a 3-year study to examine methodologies for measuring the workloads of providers of child welfare services and providers of community mental health services; and

(II) which, at a minimum, requires the organization to—

(aa) examine and document which methodologies are used to measure caseworker and supervisor workloads;

(bb) develop general standards for measurement and size of workloads;

(cc) apply and validate standards for measurement and size of workloads; and

(dd) develop software that enables agencies to use appropriate methodologies to measure workloads; and

(ii) consult with an advisory body selected by the Secretary, in planning and carrying out the study described in clause (i); and

(C) under contract with an independent research organization, conduct a study that—

(i) is designed to evaluate strategies for the recruitment and retention of foster parents, and the effects of foster parent training programs on the retention of foster parents; and

(ii) shall identify successful recruitment techniques and recommend steps which could be taken at the Federal, State, or local level to improve the recruitment, retention, and training of foster parents.

(2) CHILD SEPARATION GUIDELINES STUDY.—The Secretary shall conduct a study designed to answer the following questions:

(A) How do the criteria for removal of children from the home, and the tools for assessing the risk to the child if not removed from the home, vary from State to State? In considering this question, the Secretary should examine—

(i) the decisionmaking process at the caseworker level in at least 3 States, at least 1 of which has a significantly higher than average rate of removing children from the home, at least 1 of which has an approximately average rate of removing children from the home, and at least 1 of which has a significantly lower than average rate of removing children from the home; and

(ii) other factors that may affect placement rates such as State laws and policies, interpretations by the State child welfare agency of the reasonable efforts requirement of section 471(a)(15) of the Social Security Act, and the tendency to place or not place children as a result of economic incentives provided by various State and Federal funding sources.

(B) What guidelines should be used to assess such risk and determine the need for removal of children from the home, and what kind of training would ensure the consistent application of such guidelines? The Secretary should review and compile all current research relevant to this question.

(c) AVAILABILITY OF STUDY RESULTS.—The Secretary shall make the results and recommendations of each study described in subsection (b) available for dissemination.

(d) EFFECTIVE DATE.—This section and the amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 1336. CHILD WELFARE DEMONSTRATION PROJECTS.

(a) GENERAL PROVISIONS.—

(1) MINIMUM NUMBER OF PROJECTS OF EACH TYPE.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall authorize at least 1 demonstration project to be conducted under each paragraph of subsection (b), and at least 1 demonstration project to be conducted under each clause of subsection (b)(2)(A), during the 4-year period beginning with fiscal year 1994.

(2) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—For demonstration projects approved by the Secretary under paragraph (1), there are authorized to be appropriated to the Secretary not to exceed $15,000,000 for each of fiscal years 1994, 1995, 1996, and 1997.

(b) SPECIFIC TYPES OF PROJECTS.—

(1) EXPEDITIOUS PERMANENT PLACEMENT OF CHILDREN.—

(A) IN GENERAL.—The Secretary may make no more than 3 grants to States or localities to conduct demonstration projects, throughout the State or in areas selected by the State as having the greatest need, designed to—

(i) review statutes, administrative and judicial procedures, and agency legal representation, in effect in the State or locality, that govern determinations of abandonment of children, termination of parental rights, and permanent placement of children, particularly with respect to children abandoned at or shortly after birth;

(ii) assess which of such procedures or laws cause delays in the permanent placement of such children or the consideration of termination of parental rights;

(iii) assess the extent, or lack, of training of judges and child protection service workers on the timelines for determinations involving termination of parental rights or permanent placement of such children;

(iv) assess the provision of (and the impact of providing) coordinated comprehensive social services, particularly in relation to reunification or maintenance of families;

(v) assess the impact of the designation of entities or individuals that have or could be granted standing to initiate placement or termination of parental rights proceedings with respect to children who have been placed under protective care or public supervision;

(vi) assess the extent of the current presence of individuals either employed by a social service agency or a private entity, who are specifically responsible for expediting consideration of the termination of parental rights and permanent placement, particularly with respect to children abandoned at or shortly after birth,

and the impact of such individuals on the timelines for such considerations;

(vii) assess the success of programs which concurrently provide planning for, and services to, preadoptive and natural parents; and

(viii) implement new procedures or make other improvements (as determined by the assessments conducted pursuant to this paragraph) that ensure more timely hearing of, and final decisions on, cases involving termination of parental rights and the permanent placement of children, with the goal of substantially reducing the amount of time that elapses from the time the child is removed from a home setting and is permanently placed in a stable adoption placement, including, at the option of the State or locality, improvements that include activities that—

(I) provide additional personnel identified as necessary under any provision of this paragraph to pursue or process cases involving termination of parental rights or expeditious permanent placements;

(II) expand the standing of foster parents and others to bring actions involving the termination of parental rights and permanent placements; and

(III) require certain children to be placed in foster care in homes that are likely to become permanent adoptive homes of such children.

(B) APPLICATION.—Each State or locality desiring to conduct a demonstration project under this paragraph shall submit to the Secretary an application containing—

(i) an assurance that the State or locality will develop and carry out the project jointly with appropriate judicial administrators, and with appropriate agencies of the State or locality that provide services to children abandoned at or shortly after birth; and

(ii) such other information as the Secretary may require by regulation.

(C) APPROVAL OF CERTAIN APPLICATIONS.—

(i) IN GENERAL.—The Secretary shall approve not more than 3 applications to conduct projects which appear likely to contribute significantly to the achievement of the purpose of this paragraph, particularly as they relate to changes in the legislative, judicial, and administrative practices with respect to permanent placement and termination of parental rights.

(ii) DISTRIBUTION CRITERION.—In determining whether to approve applications under this paragraph, the Secretary shall ensure that grants under this paragraph are made to applicants whose positions on consideration of parental rights and the termination of such rights reflect the range of statutory and judicial positions taken by States on such matters.

(iii) GRANT PERIOD.—Subject to the availability of appropriations therefor, the Secretary shall make grants under this paragraph for a period of 4 years.

(D) EVALUATIONS; REPORT.—Each State and locality that conducts a demonstration project under this paragraph shall develop and carry out a plan for evaluating the effects of the project, and shall submit to the Secretary a report on such evaluation.

(E) DISSEMINATION OF REPORTS.—The Secretary shall make available to the Congress and the public the reports submitted pursuant to subparagraph (D).

(F) REVIEW AND EVALUATION BY THE SECRETARY.—The Secretary shall periodically review and evaluate the conduct of each demonstration project conducted under this paragraph.

(G) AUTHORITY TO SUSPEND OR TERMINATE PROJECTS.—Notwithstanding subparagraph (C)(iii), the Secretary may suspend for any period or terminate the authority to conduct a demonstration project under this paragraph, and may discontinue the provision of grants under this paragraph for the project, if the Secretary determines that the project has not been conducted in a satisfactory manner.

(2) CULTURALLY SENSITIVE AND SPECIAL NEEDS CHILD WELFARE WORKER TRAINING DEMONSTRATION.—

(A) IN GENERAL.—

(i) TRAINING TO DELIVER CHILD WELFARE SERVICES IN BORDER REGIONS.—The Secretary shall authorize not more than 3 eligible institutions to conduct demonstration projects to train eligible individuals to deliver culturally sensitive and bilingual child welfare services in areas of the United States that border on Mexico.

(ii) TRAINING TO DELIVER CHILD WELFARE SERVICES TO HISTORICALLY UNSERVED OR UNDERSERVED POPULATIONS IN CERTAIN URBAN CENTERS.—In addition, the Secretary may make no more than 3 grants to eligible institutions to conduct projects to train eligible individuals to deliver culturally sensitive and bilingual welfare services in urban centers which have a high proportion of historically unserved or underserved populations.

(B) APPLICATIONS.—

(i) APPLICATIONS UNDER SUBPARAGRAPH (A)(i).—The Secretary shall approve an application of an eligible institution to conduct a demonstration project under subparagraph (A)(i) for a fiscal year if the Secretary has approved not more than 4 other such applications for the fiscal year and the application meets the following requirements:

(I) HISTORY OF, OR PLAN FOR, TRAINING STUDENTS TO DELIVER CHILD WELFARE SERVICES IN BORDER AREAS.—The application demonstrates that the applicant has a history of, or a plan for, training students to deliver child welfare services

in an area of the United States that borders on Mexico.

(II) TRAINING CURRICULUM REQUIREMENTS.—*The application describes the curriculum of the training program. Such curriculum must be sensitive to the culture of the area that borders on Mexico and the State in which the applicant is located, and must include training for the identification of health problems of children and their families and of child abuse and neglect.*

(III) SCOPE AND LENGTH OF TRAINING.—*The application includes an assurance that the training program meets all requirements established under subparagraph (C) governing the scope and length of the training to be provided.*

(IV) PLAN FOR PLACING INDIVIDUALS COMPLETING THE TRAINING IN BORDER AREA FAMILY ASSISTANCE AGENCIES.—*The application contains a plan for placing each eligible individual who completes the training under the project in a family assistance agency that provides services directly to residents of the border county in which the agency is located.*

(V) COMMITMENT TO CONSULT WITH STATE CHILD WELFARE AGENCY.—*The application contains a commitment by the applicant to consult with the child welfare agency of the State in which the applicant is located to ensure that the project is designed to provide individuals with child welfare skills that are needed for work with disadvantaged individuals in the area of the State that borders on Mexico.*

(ii) APPLICATIONS UNDER SUBPARAGRAPH *(A)(ii)*.—*The Secretary shall approve an application of an eligible institution to conduct a demonstration project under subparagraph (A)(ii) for a period of 4 fiscal years (subject to the availability of funds and satisfactory performance) if the Secretary has not approved more than 4 other applications for such projects and the application meets the following requirements:*

(I) The applicant demonstrates that it has a history of, expertise in, and commitment to, providing training for individuals to deliver child welfare services to historically unserved or underserved populations in urban centers.

(II) The applicant describes how the application was developed in consultation with State and local child welfare agencies, community-based organizations serving the area to be affected, and the residents of thearea, including public notice and opportunity to comment on the training program to be offered, and a plan for a continuing consultation process with these entities.

(III) The curriculum to be offered includes the broad range of Federal, State, and local programs available to provide services to historically unserved or underserved populations in urban centers, and the identification of health problems in children and their families which may lead to child abuse or neglect and the presence of such conditions.

(IV) The application includes an assurance that the training program meets all the requirements of subparagraph (C) governing the scope and length of the training to be provided.

(V) The application includes a plan for placing each eligible individual who completes the training under the project in a public or private nonprofit family assistance agency that provides services directly to unserved or underserved populations in urban centers with high concentrations of such populations.

(iii) GRANTS SUBJECT TO APPROPRIATIONS.—The Secretary shall make grants for projects authorized under subparagraph (A)(ii) subject to the availability of appropriations therefor.

(iv) REVIEW AND EVALUATION BY THE SECRETARY.—The Secretary shall periodically review and evaluate the conduct of each demonstration project authorized to be conducted under subparagraph (A)(ii).

(v) AUTHORITY TO SUSPEND OR TERMINATE PROJECTS.—The Secretary may suspend for any period or terminate the authority to conduct a demonstration project under subparagraph (A)(ii), and may discontinue the provision of grants under subparagraph (A)(ii) for the project, if the Secretary determines that the project has not been conducted in a satisfactory manner.

(C) TRAINING REQUIREMENTS.—The Secretary, in consultation with the State child welfare agencies of the eligible States, shall develop criteria regarding the scope and length of the training program to be provided under any demonstration project conducted under this paragraph to ensure that training under the program adequately prepares trainees for the work they will perform after completion of the training program. The Secretary shall treat participation in a program leading to a bachelor's or a master's degree in social work as providing such adequate preparation.

(D) GRANTS.—

(i) ALLOCATION AMONG STATES WITH APPROVED PROJECTS.—Each eligible State in which is located an eligible institution whose application to conduct a demonstration project under subparagraph (A)(i) for a fiscal year has been approved by the Secretary shall be allocated for the fiscal year that portion of the funds

available to carry out subparagraph (A)(i) for the fiscal year that is represented by—

(I) the number of disadvantaged individuals who, as of the close of the second preceding fiscal year, resided in the border counties of the State; divided by

(II) the total number of disadvantaged individuals who, as of the close of the second preceding fiscal year, resided in the border counties of all such eligible States.

(ii) GRANT AUTHORITY.—The Secretary shall make a grant to each eligible institution that the Secretary authorizes to conduct a demonstration project under subparagraph (A)(i) for a fiscal year in an amount equal to—

(I) the amount allocated for the fiscal year under clause (i) to the State in which the institution is located; divided by

(II) the number of eligible institutions in the State that are so authorized.

(E) USE OF GRANTS.—Each eligible institution that receives a grant under this paragraph—

(i) shall use the grant to equip eligible individuals with the knowledge and skills necessary to perform the range of child welfare work, from case management to supervisory skills; and

(ii) may use the grant to pay the tuition, room and board, travel, and other living expenses of eligible individuals.

(F) DEFINITIONS.—As used in this paragraph:

(i) BORDER COUNTY.—The term "border county" means—

(I) in the State of Texas, the counties of Cameron, Brooks, Hidalgo, Kenedy, Willacy, Jim Hogg, Starr, Webb, Zapata, Duval, LaSalle, Maverick, Dimmit, Zavala, Uvalde, Kinney, Val Verde, Edwards, Crockett, Terrell, Pecos, Brewster, Presidio, Jeff Davis, Reeves, Culberson, Hudspeth, Bexar, and El Paso;

(II) in the State of New Mexico, the counties of Otero, Sierra, Dona Ana, Luna, Hidalgo, Grant, Lea, Roosevelt, Chaves, Eddy, and Lincoln;

(III) in the State of Arizona, the counties of Cochise, Graham, Greenlee, Maricopa, Pinal, Pima, Yuma, La Paz, and Santa Cruz; and

(IV) in the State of California, the counties of Imperial, San Diego, Riverside, and Orange.

(ii) CHILD WELFARE AGENCY.—The term "child welfare agency" means, with respect to a State, the individual or agency that administers or supervises the administration of the State plan for child welfare services under part B of title IV of the Social Security Act.

(iii) DISADVANTAGED INDIVIDUAL.—The term "disadvantaged individual" means an individual whose

income does not exceed 130 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size of the individual's family.

(iv) ELIGIBLE INDIVIDUAL.—The term "eligible individual" means any individual who—

(I) is, or intends to become, an employee of a family assistance agency in an eligible State; and

(II) enters into an agreement with an eligible institution in the State under which—

(aa) the institution agrees to train the individual to deliver culturally sensitive and bilingual child welfare services in the area of the United States that borders on Mexico; and

(bb) the individual agrees to so deliver such services at or from a site approved by the child welfare agency of the State for at least 1 year beginning within a reasonable time after the individual completes the training under a project conducted under subparagraph (A)(i), or for a period of 1 year for each year of assistance or training received beginning upon completion of the training under a project conducted under subparagraph (A)(ii).

(v) ELIGIBLE INSTITUTION.—The term "eligible institution" means any institution of higher education that is located in an eligible State.

(vi) ELIGIBLE STATE.—The term "eligible State" means Texas, New Mexico, Arizona, and California.

(vii) FAMILY ASSISTANCE AGENCY.—The term "family assistance agency" means a child welfare agency, family planning agency, hospital, clinic, community mental health facility, or drug and alcohol treatment program.

(viii) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" means—

(I) an institution of higher education (as defined in section 1201(a) or 481(a) of the Higher Education Act of 1965); and

(II) an area vocational education school (as defined in subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act).

(ix) The term "urban centers" means an area in a metropolitan statistical area, as designated by the Director of the Office of Management and Budget, which has a high incidence of individuals in historically unserved or underserved populations who are in need of social services, as determined by the Secretary using the most recent and best available information. A list of such urban centers shall be published by the Secretary in the Federal Register no more than 180 days after the date of the enactment of this Act.

(x) The term "historically unserved or underserved populations" includes—

(I) minority populations;

(II) persons with limited English proficiency;

(III) populations residing in urban areas and exhibiting a high incidence of child abuse, neglect, or abandonment, as determined by the Secretary;

(IV) homeless persons (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act);

(V) persons who are, or are in danger of becoming, infected with the human immunodeficiency virus; and

(VI) persons who abuse alcohol or drugs.

(G) RECOVERY OF ASSISTANCE IN CERTAIN CASES.—Any individual participating in a project conducted under subparagraph (A) who breaches the agreement referred to in subparagraph (F)(iv)(II) shall repay to the Secretary an amount equal to the amount or value of assistance received by the individual under the project, ratably reduced, if applicable, by a proportion representing that portion of the year during which the individual complied with the agreement. The Secretary shall establish guidelines and repayment schedules to carry out this subparagraph.

(3) JOINT TRAINING DEMONSTRATION.—

(A) IN GENERAL.—The Secretary may make grants under this paragraph, on a competitive basis, to not more than 3 State or local government agencies to conduct demonstration projects designed to test the effect of joint training programs for the staff of child welfare, mental health, and juvenile justice agencies, and for judicial personnel and judges.

(B) ELIGIBILITY.—To be eligible for a grant under this paragraph, a State or local government agency shall designate a public agency which provides services to children in the State and demonstrate that at least 2 such agencies will participate in the project by contributing financial resources, staff resources, and trainees.

(C) APPROVAL OF CERTAIN APPLICATIONS.—The Secretary shall approve not more than 3 applications to conduct projects which appear likely to contribute significantly to the achievement of the purpose of this paragraph.

(D) USE OF GRANT.—Each State or local government agency that receives a grant under this paragraph shall use the grant to train staff (including supervisors) of public and private agencies who provide services to children or adolescents at risk of requiring foster care or to the families of such children or adolescents. Such training shall be designed to—

(i) educate staff about the special needs of, and service programs for, certain populations of children or adolescents, such as those who have been sexually abused, suffer from serious emotional disturbances, are substance abusers, have acquired immune deficiency

syndrome, or are infected with a human immunodeficiency virus;

(ii) coordinate the interagency delivery of services (including family preservation services, family reunification services, independent living services, and supportive services) to children at risk of being placed in foster care; and

(iii) provide training for judges or other administrative personnel, who are authorized to make final determinations as to termination of parental rights or placement of children in either temporary or permanent situations, to determine and incorporate into their decisions factors relating to the physical, mental, and social interests of the child.

(E) EVALUATIONS; REPORT.—Each State or local government agency that conducts a demonstration project under this paragraph shall develop and carry out a plan for evaluating the effects of the training provided under the project, and shall submit to the Secretary a report on such evaluation.

(F) DISSEMINATION OF REPORTS.—The Secretary shall make available to the Congress and the public the reports submitted pursuant to subparagraph (E).

(c) FOSTER CARE AND ADOPTION ASSISTANCE DEMONSTRATION.—

(1) IN GENERAL.—The Secretary may authorize not more than 5 States to conduct demonstration projects designed to test, for not more than 6 years, the feasibility of eliminating the requirements in sections 472 and 473 of the Social Security Act that relate to the income and resources of the child or of the family from which a child originated, and allowing States to receive reimbursement for foster care maintenance payments and for adoption assistance payments made with respect to children without regard to such income and resources.

(2) APPLICATION.—Each State desiring to conduct a demonstration project under this subsection shall submit to the Secretary an application in such form and containing such information as the Secretary may require by regulation.

(3) AGREEMENT ON FEDERAL MATCHING PAYMENTS AND STRATEGY FOR EVALUATION.—

(A) IN GENERAL.—As a condition precedent to approving any application to conduct a demonstration project under this subsection, the Secretary and the State shall reach agreement on—

(i) the rates at which the various types of expenditures under the project shall be reimbursed, in lieu of the rates at which such expenditures would otherwise be reimbursed under section 474 of the Social Security Act; and

(ii) a strategy for evaluating the effects of the project.

(B) LIMITATION.—The Secretary may not agree to any set of reimbursement rates under subparagraph (A)(i) of this paragraph, unless the Secretary determines that the set of rates is likely to result in an amount of Federal pay-

ments to the State under section 474 of the Social Security Act that does not exceed the amount that would have been so paid to the State if the State were not conducting the demonstration project.

(4) APPROVAL OF CERTAIN APPLICATIONS.—

(A) IN GENERAL.—The Secretary shall approve not more than 5 applications to conduct projects which appear likely to contribute significantly to the achievement of the purpose of this subsection.

(B) PROJECT LIFETIME.—

(i) 3 YEARS.—Each agreement under paragraph (3) shall be for a term of 3 years.

(ii) AUTHORITY TO RENEW PROJECT FOR 3 YEARS.—Upon the request of the State, the Secretary shall extend for 3 additional years the term of any agreement under paragraph (3).

(5) EVALUATIONS; REPORT.—Each State that conducts a demonstration project under this subsection shall develop and carry out a plan for evaluating the effects of the project, and shall submit to the Secretary a report on such evaluation.

(6) DISSEMINATION OF REPORTS.—The Secretary shall make available to the Congress and the public the reports submitted pursuant to paragraph (5).

SEC. 1337. DEMONSTRATION OF INDEPENDENT LIVING SERVICES FOR YOUNG ADULTS.

(a) IN GENERAL.—The Secretary of Health and Human Services may authorize 1 State to conduct a demonstration project for 3 years under which—

(1) community-based services are provided to former foster children who have attained the age of 21 years but have not attained the age of 25 years; and

(2) the State must arrange for an evaluation of the impact of the demonstration project on the well-being of the individuals who participate in the project.

(b) SERVICES.—The services referred to in subsection (a) may include self-help groups, counseling, treatment for survivors of abuse, mentoring, alumni groups, and coordination of, and referral to, community services by independent living agency staff.

SEC. 1338. HOME REBUILDERS DEMONSTRATION PROJECT.

(a) IN GENERAL.—Upon written application of the State of New York (in this section referred to as the "State"), and after the Secretary of Health and Human Services approves the application as meeting the requirements set forth in subsection (b), the State may conduct a demonstration project for the purpose of testing how to enhance the practices and procedures that will expedite the discharge of children from foster care, including the appropriate reunification of children with their families, or the adoption of children by suitable adoptive parents.

(b) PROJECT REQUIREMENTS.—In an application submitted under subsection (a), the State shall provide that the following terms and conditions shall be in effect under the demonstration project:

(1) Services and assistance for reunification of children with their families or adoption may be provided to not more than 2,000 eligible children (exclusive of siblings).

(2) Services and assistance shall be provided to explore and test innovative means to facilitate expedited and appropriate discharge of children from foster care. Such services and assistance may include social services and other forms of assistance designed to ameliorate or remedy personal problems, behaviors, or home conditions.

(3) For the purpose of testing an alternative to the per diem method of provider reimbursement, payments to participating agencies for total costs associated with providing foster care maintenance, services, and assistance on behalf of children will be disbursed pursuant to an approved per capita reimbursement methodology. The per capita payment will be based on the total number of care days the eligible population of children can reasonably be expected to use during the demonstration period.

(4) Eligibility for the demonstration project shall be based on the age of the child, the length of time in foster care, the type of placement, and the permanency planning goal.

(5) If an eligible child has siblings in foster care, siblings may be regarded as eligible project participants for the purpose of estimating total reimbursements in a manner approved by the Secretary of Health and Human Services.

(6) The Federal Government shall pay to the State with respect to children eligible for the demonstration project who are receiving maintenance payments, services, and assistance under the demonstration project the same amounts as would have been payable with respect to such children under parts B and E of title IV of the Social Security Act as if the families were receiving benefits under the State plan in effect during the period of the demonstration and such amounts shall be in lieu of amounts otherwise payable under such parts. The State and the Secretary of Health and Human Services shall agree to a methodology for determining such amounts prior to the beginning of the demonstration project.

(c) WAIVERS.—The Secretary of Health and Human Services may waive compliance with requirements in part E of title IV of the Social Security Act (other than paragraphs (8), (12), (13), (15), and (16) of section 471(a)) which (if applied) would prevent the State from carrying out the demonstration project under this section or prevent the State from effectively achieving the purpose of such a project.

(d) DATE OF COMMENCEMENT.—The demonstration project under this section shall commence not later than December 31, 1993.

(e) DURATION OF DEMONSTRATION.—The demonstration project under this section shall be conducted for a period not to exceed 3 years after the date such project begins.

(f) EVALUATION OF REPORTS.—The State shall collect data and conduct an appropriate evaluation of the demonstration project so as to demonstrate the effectiveness of the project. The evaluation design shall be approved by the Secretary of Health and Human Services. The State shall provide an interim and final evaluation

report to the Secretary of Health and Human Services at such times and in such manner as such Secretary determines appropriate.

(g) PROHIBITION AGAINST IMPAIRMENT OF ENTITLEMENT TO FOSTER CARE BENEFITS.—The State may not carry out the demonstration project under this section in a manner which impairs the entitlement of any qualified child to foster care benefits under a State plan approved under part E of title IV of the Social Security Act.

SEC. 1339. COMMISSION ON CHILDHOOD DISABILITY.

(a) ESTABLISHMENT OF COMMISSION.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall appoint a Commission on the Evaluation of Disability in Children (in this section referred to as the "Commission").

(b) APPOINTMENT OF MEMBERS.—(1) The Secretary shall appoint 15 members to the Commission, including—

(A) recognized experts in the field of medicine, whose work involves—

(i) the evaluation and treatment of disability in children,

(ii) the study of congenital, genetic, or perinatal disorders in children, or

(iii) the measurement of developmental milestones and developmental deficits in children; and

(B) recognized experts in the fields of—

(i) psychology,

(ii) education and rehabilitation,

(iii) law, or

(iv) the administration of disability programs, and

(v) other fields of expertise that the Secretary determines to be appropriate.

(2) Members shall be appointed within 90 days after the date of the enactment of this Act, without regard to the provisions of title 5, United States Code, governing appointments to competitive service.

(3) Members appointed under this subsection shall serve for a term equivalent to the duration of the Commission.

(4) The Secretary shall designate a member of the Commission to serve as Chairman of the Commission for a term equivalent to the duration of the Commission.

(c) ADMINISTRATIVE PROVISIONS.—(1) Service as a member of the Commission by an individual who is not otherwise a Federal employee shall not be considered service in an appointive or elective position in the Federal Government for the purposes of any provision of title 5, United States Code.

(2) Each member of the Commission who is not a full-time Federal employee shall be paid compensation at a rate equal to the daily equivalent of the rate of basic pay in effect for Level IV of the Executive Schedule for each day (including travel time) the member attends meetings or otherwise performs the duties of the Commission.

(3) While away from their homes or regular places of business on the business of the Commission, each member who is not a full-time Federal employee 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 employed intermittently in the Government service.

(d) ASSISTANCE TO COMMISSION.—The Commission may engage such technical assistance from individuals skilled in medical and other aspects of childhood disability as may be necessary to carry out the functions of the Commission. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance as the Commission may require to carry out the functions of the Commission.

(e) STUDY BY THE COMMISSION.—(1) The Commission shall conduct a study, in consultation with the National Academy of Sciences, of the effects of the definition of "disability" under title XVI of the Social Security Act (42 U.S.C. 1382 et seq.) in effect on the date of enactment of this Act, as such definition applies to determining whether a child under the age of 18 is eligible to receive benefits under such title, the appropriateness of such definition, and the advantages and disadvantages of using any alternative definition of disability in determining whether a child under age 18 is eligible to receive benefits under such title.

(2) The study described in paragraph (1) shall include issues of—

(A) recommendations for revision of the Childhood Listing of Impairments under regulations promulgated under Part B of Appendix 1 to Subpart P, section 404 of title 20, Code of Federal Regulations;

(B) the validity of a presumption of disability for children under age 4 with a genetic, congenital, or perinatal disorder;

(C) whether the need by families for assistance in meeting high costs of medical care for children with serious physical or mental impairments, whether or not they are eligible for disability benefits under title XVI of the Social Security Act, might appropriately be met through expansion of Federal health assistance programs (including the program of medical assistance under title XIX of such Act); and

(D) such other issues that the Secretary determines to be appropriate.

(f) REPORT.—Not later than September 1, 1994, the Commission shall prepare a report and submit such report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance in the Senate which shall summarize the results of the study described in subsection (e) and include any recommendations that the Commission determines to be appropriate.

(g) TERMINATION OF COMMISSION.—The Commission shall terminate on September 30, 1994.

PART II—OTHER INCOME SECURITY AND HUMAN RESOURCES PROVISIONS

Subpart A—Aid to Families With Dependent Children

SEC. 1341. DISREGARD OF INCOME AND RESOURCES DESIGNATED FOR EDUCATION, TRAINING, AND EMPLOYABILITY.

(a) DISREGARD AS RESOURCE.—Section 402(a)(7)(B) (42 U.S.C. 602(a)(7)(B)) is amended—

(1) by striking "or" before "(iv)"; and

(2) by inserting ", or (v) at the option of the State, in the case of a family receiving aid under the State plan (and a family not receiving such aid but which received such aid in at least 1 of the preceding 4 months or became ineligible for such aid during the preceding 12 months because of excessive earnings), any amount not to exceed $8,000 in a qualified asset account (as defined in section 406(i)) of such family" before "; and".

(b) DISREGARD AS INCOME.—

(1) IN GENERAL.—Section 402(a)(8)(A) (42 U.S.C. 602(a)(8)(A)) is amended—

(A) by striking "and" at the end of clause (vii); and

(B) by inserting after clause (viii) the following new clause:

"(ix) shall disregard any interest or income earned on a qualified asset account (as defined in section 406(i)); and".

(2) NONRECURRING LUMP SUM EXEMPT FROM LUMP SUM RULE.—Section 402(a)(17) (42 U.S.C. 602(a)(17)) is amended by adding at the end the following: "; and that this paragraph shall not apply to earned or unearned income received in a month on a nonrecurring basis to the extent that such income is placed in a qualified asset account (as defined in section 406(i)) the total amounts in which, after such placement, does not exceed $8,000;".

(3) TREATMENT AS INCOME.—Section 402(a)(7) (42 U.S.C. 602(a)(7)) is amended—

(A) by striking "and" at the end of subparagraph (B);

(B) by striking the semicolon at the end of subparagraph (C) and inserting "; and"; and

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

"(D) shall treat as income any distributions from a qualified asset account (as defined in section 406(i)(1)) which do not meet the definition of a qualified distribution under section 406(i)(2);".

(c) QUALIFIED ASSET ACCOUNTS.—Section 406 (42 U.S.C. 606) is amended by adding at the end the following:

"(i)(1) The term 'qualified asset account' means a mechanism approved by the State (such as individual retirement accounts, escrow accounts, or savings bonds) that allows savings of a family receiving aid to families with dependent children to be used for qualified distributions.

"(2) The term 'qualified distributions' means distributions for expenses directly related to one or more of the following purposes:

"(A) The attendance of a member of the family at any education or training program.

"(B) The improvement of the employability (including self-employment) of a member of the family (such as through the purchase of an automobile).

"(C) The purchase of a home for the family.

"(D) A change of the family residence.".

(d) STUDY OF USE OF QUALIFIED ASSET ACCOUNTS; REPORT.—The Secretary of Health and Human Services shall conduct a study of the use of qualified asset accounts established pursuant to the amendments made by this section, and shall report on such study and any recommendations for modifications of such amendments to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than January 1, 1996.

(e) REPORT ON AFDC ASSET LIMIT ON AUTOMOBILES.—Within 3 months after the date of the enactment of this section, the Secretary of Health and Human Services shall submit to the Congress a report on—

(1) the need to revise the limitation, established in regulations pursuant to section 402(a)(7)(B)(i) of the Social Security Act, on the value of a family automobile required to be disregarded by a State in determining the eligibility of the family for aid to families with dependent children under the State plan approved under part A of title IV of such Act; and

(2) the extent to which such a revision would increase the employability of recipients of such aid.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1993, with respect to accounts approved on or after such date and before October 1, 1996.

SEC. 1342. DISREGARD OF INCOME AND RESOURCES RELATED TO SELF-EMPLOYMENT.

(a) STATE PLAN REQUIREMENTS.—Section 402(a) (42 U.S.C. 602(a)) is amended—

(1) by striking "and" at the end of paragraph (44);

(2) by striking the period at the end of paragraph (45) and inserting "; and"; and

(3) by inserting after paragraph (45) the following:

"(46) at the option of the State, provide that the State agency—

"(A)(i) shall not include as a resource of the family of which a child referred to in paragraph (7)(A) is a member, for purposes of paragraph (7)(B), the first $10,000 of the net worth (assets reduced by liabilities with respect thereto) of all microenterprises (as defined in section 406(j)(1)) owned, in whole or in part, by the child or by a relative or other individual referred to in paragraph (7)(A), for a period not to exceed 2 years; and

"(ii) shall take into consideration as earned income of the family of which the child is a member, only the net

profits (as defined in section 406(j)(2)) of such microenterprises, for a period not to exceed 2 years; and

"(B) shall ensure that caseworkers are able to properly advise recipients of aid under the State plan of the option of microenterprise as a legitimate route towards self-sufficiency, and that caseworkers encourage recipients of such aid who are interested in starting a microenterprise to participate in a program designed to assist them in such effort.".

(b) DEFINITIONS.—Section 406 (42 U.S.C. 606), as amended by section 1341(c) of this Act, is amended by adding at the end the following:

"(j)(1) The term 'microenterprise' means a commercial enterprise which has 5 or fewer employees, 1 or more of whom owns the enterprise.

"(2) The term 'net profits' means, with respect to a microenterprise, the gross receipts of the business, minus—

"(A) payments of principal or interest on a loan to the microenterprise;

"(B) transportation expenses;

"(C) inventory costs;

"(D) expenditures to purchase capital equipment;

"(E) cash retained by the microenterprise for future use by the business;

"(F) taxes paid by reason of the business;

"(G) if the business is covered under a policy of insurance against loss—

"(i) the premiums paid for such insurance; and

"(ii) the losses incurred by the business that are not reimbursed by the insurer solely by reason of the existence of a deductible with respect to the insurance policy;

"(H) the reasonable costs of obtaining 1 motor vehicle necessary for the conduct of the business; and

"(I) the other expenses of the business.".

(c) INCLUSION OF MICROENTERPRISE TRAINING AND ACTIVITIES IN THE JOBS PROGRAM.—

(1) IN GENERAL.—Section 482(d)(1) (42 U.S.C. 682(d)(1)) is amended adding at the end the following:

"(C) The services and activities referred to in subparagraph (A)—

"(i) in the case that at least 3 percent of the adult recipients of aid under the State plan approved under part A (as of the close of the immediately preceding fiscal year) elect to participate in microenterprise activities, shall include programs described in paragraph (4); or

"(ii) in the case that not more than 3 percent of the adult recipients of such aid elect to participate in microenterprise activities, may include programs described in paragraph (4).".

(2) MICROENTERPRISE PROGRAMS.—Section 482(d) (42 U.S.C. 682(d)) is amended by adding at the end the following:

"(4) The programs described in this paragraph are programs of public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by—

"(A) providing technical assistance, advice, and business support services (including assistance, advice, and support relating to business planning, financing, marketing, and other microenterprise development activities) to owners of microenterprises and persons developing microenterprises; and

"(B) providing general support (such as peer support and self-esteem programs) to owners of microenterprises and persons developing microenterprises.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments under part A of title IV of the Social Security Act for calendar quarters beginning on or after October 1, 1993.

SEC. 1343. TREATMENT OF STUDENT EARNINGS.

(a) DISREGARD OF EARNINGS OF STUDENTS AND INCOME OF DEPENDENT CHILD FROM A JTPA PROGRAM.—Section 402(a)(8)(A) (42 U.S.C. 602(a)(8)(A)) is amended—

(1) in clause (i)—

(A) by inserting "applying for or" before "receiving"; and

(B) by inserting ", and of each individual who is a parent and would be a dependent child if the individual were living with a caretaker relative," before "who is"; and

(2) in clause (v)—

(A) by striking "may" and inserting "shall";

(B) by inserting ", and of each individual who is a parent and would be a dependent child if the individual were living with a caretaker relative," before "which"; and

(C) by striking "time (not to exceed six months with respect to earned income)" and inserting "time,".

(b) EXEMPTION FROM RESOURCES OF EXEMPT EARNINGS OF A CHILD.—Section 402(a)(7)(B) (42 U.S.C. 602(a)(7)(B)), as amended by section 1341(a) of this Act, is amended—

(1) by striking "or" at the end of clause (iv); and

(2) by inserting ", or (vi) the earned income of any child described in clause (i) or (v) of paragraph (8)(A), in such amounts and under such conditions as are specified in the plan" before the semicolon.

(c) EXEMPT EARNINGS OF A CHILD TO BE DISREGARDED IN DETERMINING WHETHER FAMILY INCOME EXCEEDS NEED STANDARD.—Section 402(a)(18) (42 U.S.C. 602(a)(18)) is amended by striking "paragraph (8)(A)(v) or 8(A)(viii)" and inserting "clause (i), (v), or (viii) of paragraph (8)(A)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1993.

(e) AUTHORITY OF STATES TO WAIVE RECOVERY OF CERTAIN OVERPAYMENTS AND COLLECTION OF RELATED PENALTIES.—Effective upon the date of the enactment of this Act, notwithstanding any other provision of law, the amount that would otherwise be paid to a State under section 403 of the Social Security Act shall not be reduced, and action under section 404 of such Act shall not be taken, by reason of that State's decision to waive, before April 1, 1993, the recovery of overpayments, or the collection of any related penalty, arising from the accrual of savings (but not in excess of $6,000) by a child receiving aid to families with dependent children under the

State plan approved under part A of title IV of such Act, but only if the State agency became aware of the excess savings before the date of the enactment of this Act, and thereafter found that—

(1) the savings were the result of the earnings of such child;

(2) the child was a full-time student throughout the time that such savings (together with those of all other members of the child's family) exceeded $1,000;

(3) the earnings were saved for the purpose of furthering the child's education; and

(4) there was no evidence of fraud or of intent to conceal the savings, on the part of the caretaker relative of the child.

SEC. 1344. ENCOURAGING USE OF TRANSITIONAL CHILD CARE PROGRAM.

(a) DEVELOPMENT OF METHODOLOGY; REPORT TO THE CONGRESS.—The Comptroller General of the United States shall develop an appropriate methodology for determining the proportion of eligible children which are receiving child care provided under section 402(g)(1)(A)(ii) of the Social Security Act, and shall submit to the Congress, within 6 months after the date of the enactment of this section, a report on the findings of the Comptroller General.

(b) STATE PLAN REQUIREMENTS.—Section 402(a) (42 U.S.C. 602(a)) is amended by inserting after paragraph (28) the following:

"(29) provide that the State agency—

"(A) establish procedures by which caseworkers will be informed of the child care program of the State under subsection (g)(1)(A)(ii); and

"(B) make a good faith effort to develop information materials, that are written in a clear and simple manner, describing the program referred to in subparagraph (A);".

(c) AUTHORITY TO WAIVE FAMILY CONTRIBUTION IN CERTAIN CASES.—Section 402(g)(1)(A)(vii) (42 U.S.C. 602(g)(1)(A)(vii)) is amended—

(1) by striking "A family" and inserting "(I) Except as provided in subclause (II), a family"; and

(2) by adding at the end the following:

"(II) The State agency may waive the requirement of subclause (I) in the case of any family whose income is at or below the poverty level for a family of the same size.".

(d) PROVISION OF BENEFITS.—Section 402(g)(1)(A) (42 U.S.C. 602(g)(1)(A)) is amended by adding at the end the following:

"(ix)(I) A family shall not be eligible for child care provided under this subparagraph unless the family meets appropriate application requirements established by the State.

"(II) The State agency may provide child care under this subparagraph to any family which has not requested such care if the family is eligible for such care and agrees to receive such care.".

(e) EFFECTIVE DATES.—

(1) DEVELOPMENT OF METHODOLOGY; AUTHORITY TO WAIVE FAMILY CONTRIBUTION.—Subsection (a) and the amendments made by subsection (c) shall take effect on the date of the enactment of this Act.

(2) STATE PLAN REQUIREMENTS.—The amendment made by subsection (b) shall take effect on October 1, 1993, and shall apply to payments under part A of title IV of the Social Securi-

ty Act for fiscal year 1994 and payments made under such part for any succeeding fiscal year.

(3) PROVISION OF BENEFITS.—The amendment made by subsection (d) shall take effect at the end of the 6-month period that begins with the date of the enactment of this Act.

SEC. 1345. INCREASE IN STEPPARENT INCOME DISREGARD.

(a) IN GENERAL.—Section 402(a)(31) (42 U.S.C. 602(a)(31)) is amended by striking "$75" and inserting "$90".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1992, and shall apply to payments under part A of title IV of the Social Security Act for fiscal year 1993 and such payments for succeeding fiscal years.

SEC. 1346. STATE OPTION TO USE RETROSPECTIVE BUDGETING WITHOUT MONTHLY REPORTING.

(a) IN GENERAL.—Section 402(a)(13) (42 U.S.C. 602(a)(13)) is amended—

(1) by striking all that precedes subparagraph (A) and inserting the following:

"(13) provide, at the option of the State and with respect to such category or categories as the State may select and identify in the State plan, that—"; and

(2) in each of subparagraphs (A) and (B), by striking ", in the case of families who are required to report monthly to the State agency pursuant to paragraph (14)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1992, and shall apply to payments under part A of title IV of the Social Security Act for fiscal year 1993 and such payments for succeeding fiscal years.

SEC. 1347. DELAY IN REQUIREMENT THAT OUTLYING AREAS OPERATE AN AFDC-UP PROGRAM.

Section 401(g)(2) of the Family Support Act of 1988 (42 U.S.C. 602 note; 102 Stat. 2396) is amended by striking "October 1, 1992" and inserting "the date of the repeal of the limitations contained in section 1108(a) of the Social Security Act on payments to such jurisdictions for purposes of making maintenance payments under parts A and E of title IV of such Act".

Subpart B—JOBS Program

SEC. 1351. FUNDING FOR THE JOBS PROGRAM.

(a) ENHANCED MATCH FOR FISCAL YEARS 1993, 1994, AND 1995.—Section 403(l) (42 U.S.C. 603(l)) is amended by adding at the end the following:

"(5)(A) Subclause (I) of paragraph (1)(A)(ii) shall be applied by substituting—

"(i) '65 percent' for '50 percent', in fiscal year 1993;

"(ii) '62 percent' for '50 percent', in fiscal year 1994; and

"(iii) '54 percent' for '50 percent', in fiscal year 1995.

"(B) Subclause (II) of paragraph (1)(A)(ii) shall be applied by substituting—

"(i) 'the sum of 15 percent and the greater of 60 percent or the Federal medical assistance percentage' for 'the greater of 60

percent or the Federal medical assistance percentage' in fiscal year 1993;

"(ii) 'the sum of 12 percent and the greater of 60 percent or the Federal medical assistance percentage' for 'the greater of 60 percent or the Federal medical assistance percentage' in fiscal year 1994; and

"(iii) 'the sum of 4 percent and the greater of 60 percent or the Federal medical assistance percentage' for 'the greater of 60 percent or the Federal medical assistance percentage' in fiscal year 1995.

"(C) This paragraph shall not apply with respect to any State in any fiscal year in which State or local funds expended for the costs of operating a program established under part F in such fiscal year (determined without regard to this paragraph) are not at least at the level expended for the prior fiscal year.".

(b) INCREASE IN FUNDING CAP FOR FISCAL YEARS 1993 AND 1994.—Section 403(k)(3) (42 U.S.C. 603(k)(3)) is amended—

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

(2) by striking subparagraphs (C) and (D) and inserting the following:

"(C) $1,000,000,000 in the case of each of the fiscal years 1991 and 1992,

"(D) $1,100,000,000 in the case of fiscal year 1993,

"(E) $1,200,000,000 in the case of fiscal year 1994,".

SEC. 1352. MODIFICATION OF THE 20-HOUR RULE.

(a) IN GENERAL.—Section 403(l)(3)(D) (42 U.S.C. 603(l)(3)(D)) is amended—

(1) by inserting "(i)" after "(D)"; and

(2) by adding at the end the following:

"(ii) For purposes of this paragraph, each hour of classroom instruction of an individual who is enrolled in a degree program offered by an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965), or in such other education or training programs that require substantial outside classroom preparation (which programs shall be designated by the Secretary in regulations), shall be considered 2 hours of participation in the program under part F.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 1353. ASSIGNMENT OF INDIVIDUALS TO WORK SUPPLEMENTATION PROGRAM.

(a) IN GENERAL.—Section 484(c) (42 U.S.C. 684(c)) is amended by striking "section 482(e) or (f)" and inserting "section 482(f)".

(b) ASSIGNMENT IN PRIVATE SECTOR.—Section 482(e) (42 U.S.C. 682(e)) is amended—

(1) by striking subparagraph (C) of paragraph (3) and inserting the following new subparagraph:

"(C) For purposes of this section, a supplemented job is a job provided to an eligible individual by any nonpublic employer for which all or part of the wages are paid by the State or local agency administering the State plan under part A. A State may subsidize

under the program any job which such State determines to be appropriate."; and

(2) by striking subparagraph (A) of paragraph (5) and inserting the following new subparagraph:

"(5)(A) Nothing in this subsection shall be construed as requiring the State or local agency administering the State plan to provide that an eligible individual filling a job position provided by a nonpublic employer shall be given employee status by such employer during the first 13 weeks such individual fills such position.".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect with respect to assignments made on or after October 1, 1992.

SEC. 1354. EXPANSION OF COVERAGE FOR INDIAN TRIBES.

(a) IN GENERAL.—Section 482(i)(2)(A) (42 U.S.C. 682(i)(2)(A)) is amended by striking "members of such Indian tribe receiving aid to families with dependent children" and inserting "Indians receiving aid to families with dependent children who reside on the reservation or within the designated service area".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1993.

SEC. 1355. MODIFICATION OF JOBS PERFORMANCE STANDARDS REQUIREMENT.

(a) IN GENERAL.—Section 487(a)(2) (42 U.S.C. 687(a)(2)) is amended by striking "for" and inserting "with respect to".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subpart C—Child Support Enforcement

SEC. 1361. REPORTS TO CREDIT BUREAUS ON PERSONS DELINQUENT IN CHILD SUPPORT PAYMENTS.

(a) IN GENERAL.—Section 466(a)(7) (42 U.S.C. 666(a)(7)) is amended—

(1) by striking "upon the request of such agency" and inserting ", and procedures which require the State to periodically report to any such agency the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency unless the agency requests not to receive such information"; and

(2) by striking "(C) a fee" and all that follows through "by the State" and inserting ", and (C) such information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) shall take effect on October 1, 1993.

(2) EXCEPTION.—If the Secretary of Health and Human Services determines that a State is unable to comply with the amendments made by subsection (a), such State shall be exempt

from compliance with such amendments until the State establishes an automated data processing and information retrieval system under section 454(24) of the Social Security Act, or October 1, 1995, whichever occurs earlier.

SEC. 1362. AGREEMENT TO ASSIST IN LOCATING MISSING CHILDREN UNDER THE PARENT LOCATOR SERVICE.

(a) IN GENERAL.—Section 463 (42 U.S.C. 663) is amended by adding at the end the following new subsection:

"(f) The Secretary shall enter into an agreement with the Attorney General of the United States, under which the services of the Parent Locator Service established under section 453 shall be made available to the Office of Juvenile Justice and Delinquency Prevention upon its request for the purpose of locating any parent or child on behalf of the Office of Juvenile Justice and Delinquency Prevention for the purpose of—

"(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

"(2) making or enforcing a child custody determination.

The Parent Locator Service shall charge no fees for services requested pursuant to this subsection.".

(b) CONFORMING AMENDMENT.—Section 463(c) (42 U.S.C. 663(c)) is amended by striking "(a), (b), or (e)" and inserting "(a), (b), (e), or (f)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1992.

Subpart D—Community Works Progress Demonstrations

SEC. 1371. COMMUNITY WORKS PROGRESS DEMONSTRATION PROJECTS.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 091320 0913) is amended by adding at the end the following new section:

"SEC. 1144. COMMUNITY WORKS PROGRESS DEMONSTRATION PROJECTS

"(a) AUTHORIZATION.—

"(1) IN GENERAL.—The Secretary of Labor shall, in consultation with the Secretary of Health and Human Services, award grants to States and units of general local government located in urban areas for the purpose of carrying out community works progress projects under which employment and employment-related services are provided to—

"(A) noncustodial parents who are not employed and who are at least 2 months in arrears in the payment of court-ordered child support; and

"(B) recipients of aid under a State plan approved under part A of title IV, individuals eligible to receive such aid, or individuals at risk of becoming eligible to receive such aid.

"(2) TIME LIMIT AND APPROVAL.—A grant under this subsection may extend over a period of not more than 36 months. The provision of payments under such grant shall be subject to annual approval by the Secretary of Labor. If the Secretary suspends or terminates payments under a grant to a State or unit of general local government, the Secretary may make a grant to

another State or unit of general local government, as the case may be, that meets the requirements of this section.

"*(b)* APPLICATION NOTICE.—*Not later than January 1, 1993, the Secretary of Labor shall publish a notice in the Federal Register regarding the application requirements for grants under subsection (a).*

"*(c)* SELECTION REQUIREMENTS.—

"*(1)* IN GENERAL.—*The Secretary of Labor shall select 6 applicants in accordance with the following requirements:*

"*(A) The Secretary shall select 2 States and 4 units of general local government located in urban areas.*

"*(B) At least 1 State and at least 2 units of general local government referred to in subparagraph (A) shall provide assurances in the application submitted under subsection (d) that the State or unit (or any entity to which the State or unit will provide amounts from a grant received under subsection (a)), as the case may be, will provide compensation under the projects to—*

"*(i) each noncustodial parent who is not employed and who is at least 2 months in arrears in the payment of court-ordered child support in accordance with subsection (e)(5)(A)(ii); and*

"*(ii) each recipient of aid under a State plan approved under part A of title IV, an individual eligible to receive such aid, or an individual at risk of becoming eligible to receive such aid, in accordance with paragraphs (3)(D)(ii) and (5)(D)(ii) of subsection (e).*

"*(2)* CONSIDERATION.—*In selecting States and units of general local government under paragraph (1), the Secretary of Labor shall consider—*

"*(A) the unemployment rate for the area in such State or unit in which projects will be conducted;*

"*(B) the proportion of the population receiving public assistance in such area;*

"*(C) the per capita income for such area;*

"*(D) the degree of involvement and commitment demonstrated by public officials in such area;*

"*(E) the contribution that the project is likely to make toward improving the quality of life of residents in such area;*

"*(F) in the case of States, the distribution of projects among urban and rural areas in such States;*

"*(G) the extent to which the projects will emphasize the development of projects encouraging team approaches to work on identifiable projects;*

"*(H) the extent to which private and community agencies will be involved;*

"*(I) the sufficiency of the size and scope of the projects; and*

"*(J) such other criteria as the Secretary of Labor deems appropriate.*

"*(d)* APPLICATION REQUIREMENTS.—*The Secretary of Labor shall provide a grant under subsection (a) to a State or unit of general local government located in an urban area only if such State or*

unit, as the case may be, submits an application at such time and in such manner as the Secretary requires. Such application shall include—

"(1) assurances that the State or unit of general local government will conduct a program under which—

"(A) the State or unit will carry out projects to provide employment and employment-related services to noncustodial parents who are not employed and who are at least 2 months in arrears in the payment of court-ordered child support and recipients of aid under a State plan approved under part A of title IV, individuals eligible to receive such aid, or individuals at risk of becoming eligible to receive such aid;

"(B) the State or unit will provide grants to other units of general local government located in urban areas, public and private nonprofit organizations, or a consortium consisting of such units and organizations, to carry out projects for the purpose of providing such employment and employment-related services; or

"(C) the State or unit will carry out projects under subparagraph (A) in addition to providing grants under subparagraph (B) to the entities referred to in such subparagraph;

"(2) a description of the type of projects to be carried out, including a description of the types and duration of training and work experience to be provided to participants under such projects;

"(3) a comprehensive description of the objectives and performance goals for such projects;

"(4) assurances that the State or local administering agency described in part D of title IV located within the State or unit of general local government, as the case may be, will seek court-ordered enrollment in such projects of a noncustodial parent who is not employed and who is at least 2 months in arrears in the payment of court-ordered child support;

"(5) assurances that the a State or unit of general local government has arranged for the referral of recipients of aid under a State plan approved under part A of title IV to such projects;

"(6) a description of a plan for managing and funding such projects;

"(7) in the case of a State, unit of general local government, public or private nonprofit organization, or a consortium consisting of such units and organizations, that will provide compensation under the program to—

"(A) each noncustodial parent under such projects in accordance with subsection (e)(5)(A)(i); or

"(B) each recipient of aid under a State plan approved under part A of title IV, an individual eligible to receive such aid, or an individual at risk of becoming eligible to receive such aid, in accordance with paragraphs (3)(D)(i) and (5)(D)(i) of subsection (e),

the written concurrence of any local labor organization representing employees in the area who are engaged in work of the

same or similar character and nature as that proposed to be carried out by the projects;

"(8) a description of any formal job training or job search arrangements to be made available to the participants under such projects, in cooperation with State agencies;

"(9) assurances that such projects will be coordinated with other Federally assisted education programs, training programs, social service programs, and other appropriate programs;

"(10) assurances that the State or unit of general local government will participate in cooperative efforts among community-based agencies, local educational agencies, and local government agencies (as defined in paragraphs (3), (11), and (12), respectively, of section 101 of the National and Community Service Act of 1990 (42 U.S.C. 12411)), businesses, and State agencies, to develop and provide supportive services to participants under such projects;

"(11) assurances from the State in which projects are to be carried out that such State will maintain its aggregate expenditures relating to the job opportunities and basic skills training program under part F of title IV;

"(12) a description of fiscal control, accounting, audit, and debt collection procedures to assure the proper disbursal of, and accounting for, funds received from a grant under subsection (a); and

"(13) a projection of the amount the State or unit of general local government intends to spend in each fiscal year for such projects.

"(e) PROJECT REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) DEFINITION.—For purposes of this section, the terms 'community works progress project' and 'project' mean an activity that results in a specific identifiable service or product that otherwise would not be carried out with existing funds and that supplements but does not supplant existing services.

"(B) PURPOSE.—A community works progress project shall serve a significant public purpose in such fields as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public safety, and child care.

"(2) COMPLETION.—A State, unit of general local government located in an urban area, public or private nonprofit organization, or a consortium consisting of such units and organizations, carrying out projects under this section shall complete each project not later than 18 months after the date on which the 1st individual is enrolled in each such project.

"(3) PARTICIPATION REQUIREMENTS.—

"(A) PRIORITY.—A State, unit of general local government located in an urban area, public or private nonprofit organization, or a consortium consisting of such units and organizations, that is carrying out a project under this section shall select participants for such project in accordance with the following requirements:

"(i) A State, unit, organization, or consortium, as the case may be, shall first accept individuals described in subparagraphs (A) and (B) of subsection (a)(1) who volunteer for such project.

"(ii) If an insufficient number of individuals described in clause (i) volunteer under such clause, the State, unit, organization, or consortium, as the case may be, shall, in accordance with subsection (d)(4), seek court-ordered enrollment of noncustodial parents who are not employed and who are at least 2 months in arrears in the payment of court-ordered child support.

"(iii) If an insufficient number of individuals described in clause (i) volunteer under such clause, and an insufficient number of noncustodial parents are enrolled pursuant to clause (ii), the State, unit, organization, or consortium, as the case may be, shall, in accordance with subsection (d)(5), enroll individuals according to the following priority:

"(I) Recipients of aid under the State plan in accordance with section 407 (relating to unemployed parents).

"(II) Recipients of such aid who are not unemployed parents.

"(B) RESTRICTION ON WORK HOURS PER WEEK.—In order to assure that each participant will have time to seek alternative employment or to participate in an alternative employability enhancement activity, no individual may work as a participant in a project under this section for more than 32 hours per week.

"(C) ADDITIONAL SERVICES.—A State or unit of general local government located in an urban area, as the case may be, shall, through a service delivery area (designated under section 101 of the Job Training Partnership Act (29 U.S.C. 1511)), the job opportunities and basic skills training program under section 402(a)(19) and part F of title IV, the United States Employment Service, State public employment services, or other appropriate programs, provide education, job training, or job search services to participants under a community works progress projects.

"(D) INDIVIDUALS RECEIVING AFDC.—In addition to the limitation set forth in subparagraph (A), recipients of aid under a State plan approved under part A of title IV, individuals eligible to receive such aid, or individuals at risk of becoming eligible to receive such aid may not be required to work as participants under a project on a monthly basis more than the number of hours determined in accordance with a calculation under 1 of the following clauses:

"(i) APPLICABLE MINIMUM WAGE CALCULATION.—The number of hours determined in accordance with the calculation under this clause is determined by dividing—

"(I) the amount of monthly assistance the family of such recipient is eligible to receive under such part; by

"(II) the amount equal to 125 percent of the applicable Federal or State minimum wage, whichever is greater.

"(ii) PREVAILING RATE OF PAY CALCULATION.—The number of hours determined in accordance with the calculation under this clause is determined by dividing—

"(I) the amount of monthly assistance the family of such recipient is eligible to receive under such part; by

"(II) the greater of the amount equal to 125 percent of the applicable Federal or State minimum wage (whichever is greater) or the amount equal to the prevailing rates of pay for individuals employed in similar occupations by the same employer.

"(E) TESTING AND EDUCATION REQUIREMENTS.—

"(i) TESTING.—Except as provided in clause (iii), each participant in a project shall be tested for basic reading and writing competence prior to employment under such project.

"(ii) EDUCATION REQUIREMENTS.—

"(I) FAILURE TO SATISFACTORILY COMPLETE TEST.—A participant who fails to satisfactorily complete the basic competency test required in clause (i) shall be furnished counseling and instruction in basic reading and writing competence.

"(II) LIMITED-ENGLISH.—A participant with limited-English speaking ability may be furnished instruction to improve such speaking ability as the State, unit of general local government located in an urban area, public or private nonprofit organization, or a consortium consisting of such units and organizations, as the case may be,conducting the project deems appropriate.

"(III) COUNSELING SERVICES REGARDING ALCOHOL AND DRUG ABUSE.—A State or unit shall refer participants who are in need of counseling services regarding alcohol and drug abuse to providers of such services.

"(iii) EXCEPTION.—Any individual who, within 1 year of enrollment in a project, has been tested by an employment, education, or training program for basic reading and writing competence shall not be required to be tested under clause (i).

"(F) PARTICIPANTS IN JOBS PROGRAM.—If an individual is receiving aid to families with dependent children under part A of title IV and participating in the job opportunities and basic skills training program under part F of such title, such individual may be assigned by the State agency to participate in a community works progress project if—

"(i) such participation does not conflict with the requirements of such part F; and

"(ii) such individual is referred to participate in such project in accordance with the procedures established under such part F.

"(4) USE OF GRANT.—

"(A) COMPENSATION AND BENEFITS.—Not less than 70 percent of the amount of a grant under subsection (a) shall be used by a State, unit of general local government located in an urban area, public or private nonprofit organization, or a consortium consisting of such units and organizations, as the case may be, to provide compensation and supportive services to participants under a project.

"(B) ADMINISTRATIVE EXPENSES.—Not more than 10 percent of the amount of a grant under subsection (a) may be used by a State or unit of general local government located in an urban area for administrative costs of the program carried out by such State or unit, as the case may be.

"(5) COMPENSATION FOR PARTICIPANTS.—

"(A) NONCUSTODIAL PARENTS WHO ARE NOT EMPLOYED AND IN ARREARS IN THE PAYMENT OF COURT-ORDERED CHILD SUPPORT.—Each participant who is a noncustodial parent who is not employed and who is at least 2 months in arrears in the payment of court-ordered child support shall, notwithstanding any other provision of law, be compensated for participation under a project carried out under this section in an amount equal to—

"(i) an amount not less than 125 percent of the applicable Federal or State minimum wage, whichever is greater, for each hour the participant works on such project and for each hour the participant receives education, job training, or job search services on such project (not to exceed 8 hours per week for such education, job training, or job search services); or

"(ii) the greater of—

"(I) 125 percent of the applicable Federal or State minimum wage, whichever is greater; or

"(II) the prevailing rates of pay for individuals employed in similar occupations by the same employer,

for each hour the participant works under such project and for each hour the participant receives education, job training, or job search services on such project, (not to exceed 8 hours per week for such education, job training, or job search services).

"(B) INDIVIDUALS RECEIVING AFDC.—

"(i) IN GENERAL.—Each participant who is a recipient of aid under a State plan approved under part A of title IV shall, notwithstanding any other provision of law, be compensated for participation under a project on a monthly basis.

"(ii) AMOUNT.—The amount of the compensation described in clause (i) shall be equal to 25 percent of the average (as estimated by the State or local agency administering or supervising the administration of the State plan) amount of aid to families with dependent

children under such part A paid to recipients of such aid in the area served by such project on a monthly basis. Such amount shall be paid from grant funds awarded under subsection (a) and shall be in addition to the aid received by such participant.

"(C) PAYMENTS OF AFDC.—A State agency responsible for making a payment of benefits under the State plan approved under part A to a participant in a project may transfer such payment to the entity conducting such project and such payment shall be made by such entity to such participant in conjunction with any payment made under subparagraph (B).

"(D) ADDITIONAL WORK HOURS FOR INDIVIDUALS RECEIVING AFDC.—If a recipient of aid under a State plan approved under part A of title IV accepts an offer to work hours in addition to the number of hours determined under paragraph (3)(D), such individual shall be paid for each such additional hour an amount equal to—

"(i) 125 percent of the applicable Federal or State minimum wage, whichever is greater; or

"(ii) the greater of—

"(I) 125 percent of the applicable Federal or State minimum wage, whichever is greater; or

"(II) the prevailing rates of pay for individuals employed in similar occupations by the same employer.

"(E) ALTERNATIVE COMPENSATION METHODS.—The Secretary of Labor may approve any application submitted under subsection (d) which provides for an alternative to the method of compensation for participants in a project described in this section if such alternative method—

"(i) does not reduce the amount received by any participant on an hourly basis below—

"(I) 125 percent of the applicable Federal or State minimum wage, whichever is greater; or

"(II) the prevailing rates of pay for individuals employed in similar occupations by the same employer,

as the case may be; and

"(ii) results in a monthly payment which would be greater than the monthly amount the family of the participant would otherwise receive under this section.

"(F) TREATMENT OF COMPENSATION OR BENEFITS UNDER OTHER PROGRAMS.—

"(i) HIGHER EDUCATION ACT OF 1965.—In determining any grant, loan, or other form of assistance for an individual under any program under the Higher Education Act of 1965, the Secretary of Education shall not take into consideration the compensation and benefits received by such individual under this subsection for participation in a community works progress project.

"(ii) RELATIONSHIP TO OTHER FEDERAL BENEFITS.—Notwithstanding any other provision of law, any compensation or benefits received by an individual in ac-

cordance with this paragraph for participation in a community works progress project shall be excluded from determination of income for the purposes of determining eligibility for benefits under sections 402, the supplemental security program under title XVI, title XIX, or any other Federal or federally assisted program based on need.

"(G) SUPPORTIVE SERVICES.—Each participant in a community works progress project shall receive, out of grant funds awarded under subsection (a), assistance to meet necessary costs of transportation, child care, and uniforms and other work materials.

"(6) NONDUPLICATION AND NONDISPLACEMENT.—

"(A) NONDUPLICATION.—

"(i) IN GENERAL.—Amounts from a grant provided under subsection (a) shall be used only for a project that does not duplicate, and is in addition to, an activity otherwise available in the State or unit of general local government in which the project is carried out.

"(ii) PRIVATE NONPROFIT ENTITY.—Amounts from a grant provided under subsection (a) shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency in which such entity resides, unless the requirements of subparagraph (B) are met.

"(B) NONDISPLACEMENT.—

"(i) IN GENERAL.—A State, unit of general local government located in an urban area, public or private nonprofit organization, or a consortium consisting of such units and organizations, shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such State, unit, organization, or consortium, as the case may be, of a participant in a project funded by a grant under subsection (a).

"(ii) LIMITATION ON SERVICES.—

"(I) DUPLICATION OF SERVICES.—A participant in a project funded by a grant under subsection (a) shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

"(II) SUPPLANTATION OF HIRING.—A participant in a project funded by a grant under subsection (a) shall not perform any services or duties or engage in activities that will supplant the hiring of other workers.

"(III) DUTIES FORMERLY PERFORMED BY ANOTHER EMPLOYEE.—A participant in a project funded by a grant under subsection (a) shall not perform services or duties that have been performed by or were assigned to any presently employed worker, employee who recently resigned or

was discharged, employee who is subject to a reduction in force, employee who is on leave (terminal, temporary, vacation, emergency, or sick), or employee who is on strike or who is being locked out.

"(7) LABOR STANDARDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a State, unit of general local government located in an urban area, public or private nonprofit organization, or a consortium consisting of such units and organizations, that receives amounts from a grant under subsection (a) shall comply with the labor standards described in section 142(a)(3)(C) and section 143 of the Job Training Partnership Act (29 U.S.C. 1552(a)(3)(C) and 1553) in carrying out a community works progress project.

"(B) EXCEPTIONS.—

"(i) HEALTH AND MEDICAL BENEFITS FOR CERTAIN INDIVIDUALS.—An entity described in subparagraph (A) shall not be required to provide health and medical benefits to participants under a project who are individuals enrolled under a State plan for medical assistance under title XIX.

"(ii) CERTAIN WAGE RATES.—The requirements of section 142(a)(3)(C) and section 143(d) of the Job Training Partnership Act (29 U.S.C.1552(a)(3)(C) and 1553(d)) (relating to prevailing wage rates) shall not apply with respect to an entity described in subparagraph (A) that is making compensation payments to 1 or more—

"(I) noncustodial parents in accordance with paragraph (5)(A)(i); or

"(II) recipients of aid under a State plan approved under part A of title IV, individuals eligible to receive such aid, or individuals at risk of becoming eligible to receive such aid, in accordance with paragraphs (3)(D)(i) and (5)(D)(i).

"(8) GRIEVANCE PROCEDURE.—

"(A) IN GENERAL.—Each a State, unit of general local government located in an urban area, public or private nonprofit organization, and consortium consisting of such units and organizations, conducting a community works progress project under this section shall establish and maintain a procedure for the filing and adjudication of grievances from participants in such project, labor organizations, and other interested individuals concerning such project, including grievances regarding proposed placements of such participants in such project.

"(B) DEADLINE FOR GRIEVANCES.—Except for a grievance that alleges fraud or criminal activity, a grievance under this paragraph shall be filed not later than 1 year after the date of the alleged occurrence of the event that is the subject of the grievance.

"(C) DEADLINE FOR HEARING AND DECISION.—

"(i) HEARING.—A hearing conducted under this paragraph on any grievance shall be conducted not later than 30 days after the filing of such grievance.

"(ii) DECISION.—A decision on any grievance shall be made not later than 60 days after the filing of such grievance.

"(D) ARBITRATION.—

"(i) IN GENERAL.—In the event of a decision on a grievance that is adverse to the party who filed such grievance, or 60 days after the filing of such grievance if no decision has been reached, such party shall be permitted to submit such grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties. If the parties cannot agree, the Secretary of Labor shall appoint an arbitrator from a list of qualified arbitrators within 15 days after receiving a request for such appointment from one of the parties to the grievance.

"(ii) DEADLINE FOR PROCEEDING.—An arbitration proceeding shall be held not later than 45 days after the request for such arbitration proceeding, or, if the arbitrator is appointed by the Secretary in accordance with the 2nd sentence of clause (i), not later than 30 days after the appointment of such arbitrator.

"(iii) DEADLINE FOR DECISION.—A decision concerning a grievance subject to an arbitration proceeding shall be made not later than 30 days after the date such arbitration proceeding begins.

"(iv) COST.—

"(I) IN GENERAL.—Except as provided in subclause (II), the cost of an arbitration proceeding shall be divided evenly between the parties to the arbitration.

"(II) EXCEPTION.—If a participant, labor organization, or other interested individual described in subparagraph (A) prevails under a binding arbitration proceeding, the State, unit of general local government located in an urban area, public or private nonprofit organization, or a consortium consisting of such units and organizations, which is party to such grievance shall pay the total cost of such proceeding and the attorneys' fees of such participant, labor organization, or individual, as the case may be.

"(E) PROPOSED PLACEMENT.—If a grievance is filed regarding a proposed placement of a participant in a community works progress project conducted under this section, such placement shall not be made unless it is consistent with the resolution of the grievance pursuant to this paragraph.

"(F) REMEDIES.—Remedies for a grievance filed under this paragraph include—

"(i) prohibition of the placement described in subparagraph (E);

"(ii) reinstatement of the participant to the position held by such participant prior to displacement;

"(iii) payment of lost wages and benefits of the participant;

"(iv) reestablishment of other relevant terms, conditions, and privileges of employment of the participant; and

"(v) such equitable relief as is necessary to correct any violation of this section or to make the participant whole.

"(G) ENFORCEMENT.—Suits to enforce arbitration awards under this section may be brought in any district court of the United States having jurisdiction of the parties without regard to the amount in controversy and without regard to the citizenship of the parties.

"(f) FAILURE TO MEET REQUIREMENTS.—The Secretary of Labor may suspend or terminate payments under this section for a community works progress project if the Secretary determines that a State, unit of general local government located in an urban area, public or private nonprofit organization, or a consortium consisting of such units and organizations conducting such project has materially failed to comply with the requirements of this section (including the assurances contained in the application submitted under subsection (d)), or any other terms and conditions of a grant under subsection (a) agreed to by such State, unit, organization, or consortium, as the case may be, and the Secretary.

"(g) EVALUATION.—

"(1) IN GENERAL.—The Secretary of Labor shall carry out an evaluation of the activities of not more than 4 projects. If available, the Secretary shall—

"(A) compare the projects of—

"(i) 1 State in which participants are compensated at the prevailing rate of pay for individuals employed in similar occupations by the same employer; with

"(ii) 1 State in which participants are not compensated at such prevailing rate of pay; and

"(B) compare the projects of—

"(i) 1 unit of general local government located in an urban area in which participants are compensated at the prevailing rate of pay for individuals employed in similar occupations by the same employer; with

"(ii) 1 unit of general local government located in an urban area in which participants are not compensated at such prevailing rate of pay.

"(2) CONDUCT OF EVALUATION.—The evaluation carried out under paragraph (1) shall be based on an experimental design with random assignment between a treatment group and a control group. The Secretary of Labor shall use the data provided from each such evaluation to analyze the benefits and costs of the project, including the value of the goods and services provided under such project.

"(h) REPORTS.—

"(1) INTERIM REPORT.—Not later than 2 years after the date on which the Secretary of Labor approves the 1st application of

a State or unit of general local government located in an urban area under subsection (d), the Secretary shall submit an interim report to the Congress containing—

"(A) the results of the analysis conducted under subsection (g)(3) with respect to each project completed as of such date; and

"(B) a determination by the Secretary of the effectiveness of each such project.

"(2) FINAL REPORT.—Not later than March 31, 1996, the Secretary of Labor shall submit a report to the Congress containing—

"(A) the results each analysis conducted under subsection (g)(2); and

"(B) a determination by the Secretary of the effectiveness of all projects.

"(i) ADMINISTRATIVE COSTS.—The Secretary of Labor may retain up to 3 percent of amounts authorized to be appropriated under subsection (k) in a fiscal year for administrative costs, including the costs of the evaluation carried out under subsection (g).

"(j) PAYMENTS TO ORGANIZATIONS CONDUCTING PROJECTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), for each of fiscal years 1993 through 1995, the Secretary of Labor shall pay as an entitlement to each a State or unit of general local government located in an urban area conducting a project under this section an amount equal to the expenditures to carry out such project for such fiscal year.

"(2) LIMITATION ON PAYMENTS.—For any fiscal year, the amount any State or unit of general local government located in an urban area is entitled to receive under paragraph (1) shall be limited to an amount equal to the product of—

"(A) the total amount of funds appropriated under subsection (k) for such fiscal year; and

"(B) the amount determined by dividing—

"(i) the amount projected to be spent for projects during the fiscal year as set forth in the application under subsection (d), by

"(ii) the total amount projected to be spent during such fiscal year for projects under this section as set forth in the applications submitted under subsection (d).

"(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Labor $60,000,000 for fiscal year 1993, and $70,000,000 for each of the fiscal years 1994 and 1995, to carry out subsection (a). Any amount made available to a project for a fiscal year is authorized to remain available to be expended until March 31, 1997.

"(l) TREATMENT OF OUTLAYS.—Notwithstanding section 257(b)(2)(A) of the Emergency Deficit Control Act of 1985, the program under this section and the entitlement authority of this program shall be assumed to expire after fiscal year 1995.

"(m) INTERDEPARTMENTAL TASK FORCE.—

"(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this section, the Secretary of Labor, in consultation with the Secretary of Health and Human Services, shall

establish a task force to identify any Federal funds (in addition to the funds authorized to be appropriated under subsection (k)) that may be directed for use in the community works progress projects under this section and to identify any modifications to existing policies or procedures that would facilitate the implementation of such projects.

"(2) MEMBERSHIP.—The Task Force shall consist of at least 3 members and shall include 1 representative from each of the following:

"(A) The Department of Labor.

"(B) The Department of Health and Human Services.

"(3) REPORT.—Not later than January 1, 1993, the task force shall submit a report to the Secretary of Labor, the Secretary of Health and Human Services, and the Congress that includes any findings and recommendations of the task force with respect to the identification of Federal funds under paragraph (1).

"(4) ACTION ON RECOMMENDATIONS.—The Secretary of Labor and the Secretary of Health and Human Services shall take such actions as may be necessary to carry out the recommendations of the task force contained in the report submitted under paragraph (3).".

Subpart E—Research and Demonstration Provisions

SEC. 1381. MEASUREMENT AND REPORTING OF WELFARE DEPENDENCY.

(a) FINDINGS.—The Congress finds:

(1) In the period since 1960 the average annual caseload of the aid to families with dependent children (AFDC) program under title IV of the Social Security Act has quintupled.

(2) In 1990 there were on average almost twice as many households receiving aid to families with dependent children payments as the number of households and individuals receiving unemployment compensation benefits.

(3) Nearly one-quarter of children born in the period 1967 through 1969 were on welfare (AFDC) before reaching age 18. For minority children this ratio approached three-quarters.

(4) At any given time one-quarter of school children are from single parent families, or households with neither parent. The National Assessment of Educational Progress has documented the educational losses associated with single parent or no parent households.

(5) Only one-quarter of father-absent families receive full child support and over one-half receive none.

(6) The average aid to families with dependent children benefit has declined by more than one-third since 1960.

(7) The burden of welfare dependency is an issue of necessary concern to women, who in overwhelming proportion are the heads of single parent families.

(8) The rate of welfare dependency may be rising. However, the statistical basis on which to assess this national issue is wholly inadequate, much as the statistical basis for addressing issues of unemployment was inadequate prior to the Employ-

ment Act of 1946, which required the creation of the annual economic report of the President and the development of unemployment rates.

(b) CONGRESSIONAL POLICY.—The Congress hereby declares that—

(1) it is the policy and responsibility of the Federal Government to reduce welfare dependency to the lowest possible level, and to assist families toward self-sufficiency, consistent with other essential national goals;

(2) it is the policy of the United States to strengthen families, to ensure that children grow up in families that are economically self-sufficient and to underscore the responsibility of parents to support their children;

(3) the Federal Government should help welfare recipients as well as individuals at risk of welfare dependency to improve their education and job skills, to obtain access to necessary support services, and to take such other steps as may assist them to meet their responsibilities to become financially independent; and

(4) it is the purpose of this section to aid in lowering welfare dependency by providing the public with generally accepted measures of welfare dependency so that it can track dependency over time and determine whether progress is being made in reducing welfare dependency and enabling families to be self-sufficient.

(c) DEVELOPMENT OF WELFARE DEPENDENCY INDICATORS, RATES, AND PREDICTORS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") in consultation with the Secretary of Agriculture shall develop indicators, rates, and predictors of welfare dependency.

(2) DEVELOPMENT.—The Secretary shall—

(A) develop—

(i) indicators and rates related to the level of welfare dependency in the United States; and

(ii) predictors that are correlated with welfare dependency;

(B) assess the data needed to report annually on the indicators, rates, and predictors, including the ability of existing data collection efforts to provide such data and any additional data collection needs; and

(C) not later than 2 years after the date of the enactment of this section, provide an interim report containing conclusions resulting from the development and assessment described in subparagraphs (A) and (B), to—

(i) the Committee on Ways and Means of the House of Representatives;

(ii) the Committee on Education and Labor of the House of Representatives;

(iii) the Committee on Agriculture of the House of Representatives;

(iv) the Committee on Energy and Commerce of the House of Representatives;

(v) the Committee on Finance of the Senate;

(vi) the Committee on Labor and Human Resources of the Senate; and

(vii) the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(3) CONSIDERATIONS.—In developing the indicators, rates, and predictors, the Secretary shall consider the complexity of patterns of welfare dependency and self-sufficiency attainment, and the external factors, including the economy, that affect welfare dependency.

(d) ADVISORY BOARD ON WELFARE DEPENDENCY.—

(1) ESTABLISHMENT.—There is established an Advisory Board on Welfare Dependency (in this section referred to as the "Board").

(2) COMPOSITION.—The Board shall be composed of 12 members with equal numbers to be appointed by the House of Representatives, the Senate, and the President. The Board shall be composed of experts in the fields of welfare research and statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues.

(3) VACANCIES.—Any vacancy occurring in the membership of the Board shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(4) DUTIES.—Duties of the Board shall include—

(A) providing advice and recommendations to the Secretary on the development of indicators, rates, and predictors of welfare dependency, and the identification of data collection needs and existing data collection efforts, described in subsection (c)(2)(B); and

(B) providing advice on the development and presentation of the annual report on welfare dependency indicators, rates, and predictors required under subsection (e).

(5) TRAVEL EXPENSES.—Members of the Board shall not be compensated, but shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(6) DETAIL OF FEDERAL EMPLOYEES.—The Secretary shall detail, without reimbursement, any of the personnel of the Department of Health and Human Services to the Board to assist the Board in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(7) VOLUNTARY SERVICE.—Notwithstanding section 1342 of title 31, United States Code, the Board may accept the voluntary services provided by a member of the Board.

(8) TERMINATION OF BOARD.—The Board shall be terminated at such time as the Secretary determines the duties described in subsection (d)(4) have been completed, but in any case prior to the submission of the first report required under subsection (e).

(e) ANNUAL WELFARE DEPENDENCY REPORT.—

(1) Preparation.—The Secretary shall prepare an annual report on welfare dependency in the United States. The report shall attempt to identify indicators, rates, and predictors of welfare dependency and trends in dependency, and provide information and analysis on the causes of dependency.

(2) Coverage.—The report shall include analysis of families and individuals receiving assistance under means-tested benefit programs, including the program of aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), and the Supplemental Security Income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), or as general assistance under programs administered by State and local governments.

(3) Contents.—Each report shall set forth—

(A) for each of the means-tested benefit programs described in paragraph (2)—

(i) current trends in the number and rates of recipients and the characteristics, including age, sex, marital status, presence of children, labor force participation, and disability, of the recipients; and

(ii) total expenditures;

(B) the proportion of the total population receiving each of the programs and patterns of multiple program participation and recipiency duration;

(C)(i) characteristics of each such program, including total expenditures broken down by Federal and State shares, gross income limit, need standards, and maximum potential benefit by State; and

(ii) a description of the interactions among the programs;

(D) in the case of the second, or a subsequent, report, changes in the information described in subparagraphs (A) through (C) from the previous year, and trends in program participation;

(E) annual numerical goals for recipients, and expenditures, within each program and within significant subgroups within the population, for the calendar year in which the report is transmitted and for each of the following 4 calendar years, which goals shall, consistent with other essential national goals, reflect the objectives of—

(i) reducing welfare dependency to the lowest possible level; and

(ii) increasing family self-sufficiency at or above the Federal poverty level to the greatest extent possible;

(F)(i) the programs and policies as the Secretary, in consultation with the Board, determines are necessary to meet the goals for each of the 5 years; and

(ii) such recommendations for legislation, which shall not include proposals to reduce eligibility levels or impose barriers to program access, as the Secretary may determine to be necessary or desirable to reduce welfare dependency; and

(G) interim goals for reducing the proportion of children, and families with children, who are recipients of aid to families with dependent children to 10 percent of families with children, adjusted for economic conditions.

(4) SUBMISSION.—The Secretary shall submit such a report not later than 3 years after the date of the enactment of this section, and annually thereafter, to the committees specified in subsection (c)(2)(C). The report shall be transmitted during the first 60 days of each regular session of Congress.

SEC. 1382. EXTENSION OF DEMONSTRATION TO EXPAND JOB OPPORTUNITIES.

Section 505 of the Family Support Act of 1988 (42 U.S.C. 1315 note; 102 Stat. 2404) is amended—

(1) in subsection (e), by striking "3-year period" and inserting "5-year period",

(2) in subsection (f)(2), by striking "January 1, 1993" and inserting "January 1, 1994", and

(3) in subsection (g), by striking "1991, and 1992" and inserting "1991, 1992, 1993, and 1994".

SEC. 1383. EARLY CHILDHOOD DEVELOPMENT PROJECTS.

Section 502(c) of the Family Support Act of 1988 (42 U.S.C. 1315 note; 102 Stat. 2402) is amended by inserting ", and not to exceed $3,000,000 for each of the fiscal years 1993 through 1997" before the period.

SEC. 1384. EXTENSION OF NATIONAL COMMISSION ON CHILDREN.

(a) IN GENERAL.—Section 1139(e)(1)(A) (42 U.S.C. 1320b 099(e)(1)(A)) is amended by striking "March 31, 1991" and inserting "December 31, 1992".

(b) AUTHORITY.—Notwithstanding any other provision of law, the National Commission on Children shall terminate on December 31, 1992. The Commission shall retain the authority provided to such Commission on the date of the enactment of section 1139 of the Social Security Act (42 U.S.C. 1320b 099) until December 31, 1992. The Executive Director and staff of such Commission shall have a reasonable period of time, not to extend beyond March 31, 1993, to conduct those activities that have been determined by the Chairman of the Commission to be required to close down the operations of the Commission.

SEC. 1385. SECRETARIAL REPORT ON THE DIFFERENCES IN PROGRAM RULES UNDER THE FOOD STAMP PROGRAM, AID TO FAMILIES WITH DEPENDENT CHILDREN, AND MEDICAID PROGRAMS.

(a) IN GENERAL.—No later than 6 months after the date of the enactment of this section, the Secretary of Health and Human Services and the Secretary of Agriculture shall jointly submit to the President and the Congress a report which includes—

(1) the rules which govern the food stamp program operated under the Food Stamp Act of 1977, the program of aid to families with dependent children under part A of title IV of the Social Security Act, and the program of medical assistance under title XIX of the Social Security Act;

(2) how the rules differ across such programs;

(3) which of the rules under such programs require statutory action in order to achieve complete uniformity with respect to such programs (including specific statutory citations); and

(4) which of the rules could be made uniform without statutory action.

(b) RULES TO BE EVALUATED.—

(1) IN GENERAL.—The rules to be evaluated in the report required by subsection (a) shall include all rules related to administrative procedures (described in paragraph (2) of this subsection), definitions of countable income, definitions of income disregards and exemptions, quality control sanctions and incentives, financial and other incentives to combat fraud, work and training requirements and programs, and the program under part D of title IV of the Social Security Act. Income eligibility levels shall be excluded from such report.

(2) ADMINISTRATIVE PROCEDURES DEFINED.—The administrative procedures to be evaluated in the report required by subsection (a) include procedures governing—

(A) quality control error measurements;

(B) the effective dates by which State and local agencies must implement rule changes;

(C) verification of applicant or recipient circumstances;

(D) establishment of claims for overpayment;

(E) recipient reporting requirements;

(F) income budgeting methods for applicants and recipients;

(G) eligibility redeterminations;

(H) hearings for those aggrieved by a State or local agency decision on eligibility or benefits;

(I) determinations of citizen or alien status;

(J) time limits for processing applications; and

(K) response time and other requirements with respect to notices to recipients affecting their eligibility or benefits.

(c) COORDINATION WITH REPORT OF THE ADVISORY COMMITTEE ON WELFARE SIMPLIFICATION AND COORDINATION.—The Advisory Committee on Welfare Simplification and Coordination, established by section 1778 of the Food, Agriculture, Conservation, and Trade Act of 1990, shall consider the content of the report required under this section in the preparation of the Committee's report. This section shall not be construed to extend the deadline for submission of the Committee's report specified in section 1778(e) of such Act.

SEC. 1386. NEW HOPE DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall provide for a demonstration project for a qualified program to be conducted in Milwaukee, Wisconsin, in accordance with this section.

(b) PAYMENTS.—For each calendar quarter in which there is a qualified program approved under this subsection, the Secretary shall pay to the operator of the qualified program, for no more than 20 calendar quarters, an amount equal to the aggregate amount that would otherwise have been payable to the State with respect to participants in the program for such calendar quarter, in the absence of the program, for cash assistance and child care under part

A of title IV of the Social Security Act, for medical assistance under title XIX of such Act, and for administrative expenses related to such assistance. In calculating the amount of such payment, the expenses of the program incurred in evaluating the effects of the program may be treated as amounts necessary for the proper and efficient administration of the program, for purposes of part A of title IV, and title XIX, of such Act.

(c) DEMONSTRATION PROJECT DESCRIBED.—For purposes of this section, the term "qualified program" means a program operated—

(1) by The New Hope Project, Inc., a private, not-for-profit corporation incorporated under the laws of the State of Wisconsin (in this section referred to as the "operator"), which offers low-income residents of Milwaukee, Wisconsin, employment, wage supplements, child care, health care, and counseling and training for job retention or advancement; and

(2) in accordance with an application submitted by the operator of the program and approved by the Secretary based on the Secretary's determination that the application satisfies the requirements of subsection (d).

(d) CONTENTS OF APPLICATION.—The operator of the qualified program shall provide, in its application to conduct a demonstration project for the program, that the following terms and conditions will be met:

(1) The operator will develop and implement an evaluation plan designed to provide reliable information on the impact and implementation of the program. The evaluation plan will include adequately sized groups of project participants and control groups assigned at random.

(2) The operator will develop and implement a plan addressing the services and assistance to be provided by the program, the timing and determination of payments from the Secretary to the operator of the program, and the roles and responsibilities of the Secretary and the operator with respect to meeting the requirements of this paragraph.

(3) The operator will specify a methodology for determining expenditures to be paid to the operator by the Secretary, with assistance from the Secretary in calculating the amount that would otherwise have been payable to the State in the absence of the program, pursuant to subsection (b).

(4) The operator will issue an interim and final report on the results of the evaluation described in paragraph (1) to the Secretary at such times as required by the Secretary.

(e) EFFECTIVE DATE.—This section shall take effect on the first day of the first calendar quarter that begins after the date of enactment of this Act.

Subpart F—Supplemental Security Income

SEC. 1391. PREVENTION OF ADVERSE EFFECTS ON ELIGIBILITY FOR, AND AMOUNT OF, SSI BENEFITS WHEN SPOUSE OR PARENT OF BENEFICIARY IS ABSENT FROM THE HOUSEHOLD DUE TO ACTIVE MILITARY SERVICE.

(a) ABSENT PERSON GENERALLY DEEMED TO BE LIVING IN THE HOUSEHOLD.—Section 1614(f) (42 U.S.C. 1382c(f)) is amended by adding at the end the following:

"(4) For purposes of paragraphs (1) and (2), a spouse or parent (or spouse of such a parent) who is absent from the household in which the individual lives due solely to a duty assignment as a member of the Armed Forces on active duty shall, in the absence of evidence to the contrary, be deemed to be living in the same household as the individual.".

(b) EXCLUSION FROM SSI INCOME OF HAZARDOUS DUTY PAY RECEIVED WHILE IN ACTIVE MILITARY SERVICE.—Section 1612(b) (42 U.S.C. 1382a(b)) is amended—

(1) in paragraph (18), by striking "and" the 2nd place such term appears;

(2) in paragraph (19), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(20) special pay received pursuant to section 310 of title 37, United States Code.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 1st day of the 2d month that begins after the date of the enactment of this Act.

SEC. 1392. ELIGIBILITY FOR CHILDREN OF ARMED FORCES PERSONNEL RESIDING OUTSIDE THE UNITED STATES OTHER THAN IN FOREIGN COUNTRIES.

(a) IN GENERAL.—Section 1614(a)(1)(B)(ii) (42 U.S.C. 1382c(a)(1)(B)(ii)) is amended by striking "the District of Columbia" and all that follows to the period and inserting "and who, for the month before the parent reported for such assignment, received a benefit under this title".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1992.

SEC. 1393. DEFINITION OF DISABILITY FOR CHILDREN UNDER AGE 18 APPLIED TO ALL INDIVIDUALS UNDER AGE 18.

(a) IN GENERAL.—Section 1614(a)(3)(A) (42 U.S.C. 1382c(a)(3)(A)) is amended by striking "a child" and inserting "an individual".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1992.

SEC. 1394. VALUATION OF CERTAIN IN-KIND SUPPORT AND MAINTENANCE WHEN THERE IS A COST OF LIVING ADJUSTMENT IN SSI BENEFITS.

(a) IN GENERAL.—Section 1611(c) (42 U.S.C. 1382(c)) is amended—

(1) in paragraph (1), by striking "and (5)" and inserting "(5), and (6)"; and

(2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(3) by inserting after paragraph (5) the following:

"(6) The dollar amount in effect under subsection (b) as a result of any increase in benefits under this title by reason of section 1617 shall be used to determine the value of any in-kind support and maintenance required to be taken into account in determining the benefit payable under this title to an individual (and the eligible spouse, if any, of the individual) for the 1st 2 months for which the increase in benefits applies.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to benefits paid after the calendar year 1993.

Subpart G—Other Income Security Provisions

SEC. 1401. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 091320b 0913) is amended by inserting after section 1122 the following:

"SEC. 1123. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

"In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 471(a)(15) of the Act is not enforceable in a private right of action.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to actions pending on the date of the enactment of this Act and to actions brought on or after such date of enactment.

SEC. 1402. ADULT IN FAMILY OR HOUSEHOLD ALLOWED TO ATTEST TO CITIZENSHIP STATUS OF FAMILY OR HOUSEHOLD MEMBERS UNDER AFDC AND MEDICAID.

(a) IN GENERAL.—Section 1137(d)(1)(A) (42 U.S.C. 1320b 097(d)(1)(A)) is amended to read as follows:

"(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b), a declaration in writing, under penalty of perjury—

"(i) in the case of an individual who is an adult member of a family or household applying for or receiving such benefits, by such individual or another adult member of such family or household on such individual's behalf, or

"(ii) in the case of an individual who is a child, by an adult on the individual's behalf, or

"(iii) in the case of an individual born into a family or household receiving such benefits, by an adult member of such individual's family or household on the individual's behalf no later than the next redetermination of eligibility of such family or household following the birth of such individual,

stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or nation-

al of the United States, that the individual is in a satisfactory immigration status.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to benefits provided on or after October 1, 1992.

SEC. 1403. EXCLUSION FROM INCOME OF $4,000 OF INCOME RECEIVED IN ANY YEAR BY INDIANS FROM INTERESTS INDIVIDUALLY HELD IN TRUST OR RESTRICTED LANDS.

(a) IN GENERAL.—Section 8 of the Act of October 19, 1973 (25 U.S.C. 1408) is amended—

(1) by striking "lands" and inserting "lands, and income, including interest up to $4,000 per annum derived from such income,"; and

(2) by striking "resource" and inserting "resource or income".

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective on Janauary 1, 1993.

SEC. 1404. DISCLOSURE OF INFORMATION TO RAILROAD RETIREMENT BOARD.

Section 6103(l)(1)(C) of the Internal Revenue Code of 1986 is amended to read as follows:

"(C) taxes imposed by chapters 22 and 23A, to the Railroad Retirement Board for purposes of its administration of the Railroad Retirement and Railroad Unemployment Insurance Acts.".

TITLE II—GROWTH INCENTIVES

Subtitle A—Increased Savings

PART I—RETIREMENT SAVINGS INCENTIVES

Subpart A—IRA Deduction

SEC. 2001. INCREASE IN INCOME LIMITATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 219(g)(3) is amended—

(1) by striking "$40,000" in clause (i) and inserting "$100,000", and

(2) by striking "$25,000" in clause (ii) and inserting "$75,000".

(b) COST-OF-LIVING ADJUSTMENT.—Section 219(g)(3) is amended by adding at the end the following new subparagraph:

"(C) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after 1994, the applicable dollar amounts under subparagraph (B) shall be adjusted in the same manner as under subsection (h), except that such subsection shall be applied—

"(i) by substituting '$20,000' for '$500' each place it appears in paragraph (1), and

"(ii) by substituting the appropriate dollar amounts for the amounts contained in paragraph (2)."

(c) IRA ALLOWED FOR SPOUSES WHO ARE NOT ACTIVE PLAN PARTICIPANTS.—Section 219(g)(1) is amended by striking "or the individual's spouse".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

(2) SPECIAL ACCOUNTS.—For purposes of applying section 408A of the Internal Revenue Code of 1986 (as added by section 2011), the amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 2002. INFLATION ADJUSTMENT FOR DEDUCTIBLE AMOUNT.

(a) IN GENERAL.—Section 219 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) COST-OF-LIVING ADJUSTMENTS.—

"(1) IN GENERAL.—If the cost-of-living amount for any calendar year is equal to or greater than $500, then each applicable dollar amount (as previously adjusted under this subsection) for any taxable year beginning in any subsequent calendar year shall be increased by $500.

"(2) COST-OF-LIVING AMOUNT.—The cost-of-living amount for any calendar year is the excess (if any) of—

"(A) $2,000, increased by the cost-of-living adjustment for such calendar year, over

"(B) the applicable dollar amount in effect under subsection (b)(1)(A) for taxable years beginning in such calendar year.

"(3) COST-OF-LIVING ADJUSTMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The cost-of-living adjustment for any calendar year is the percentage (if any) by which—

"(i) the CPI for such calendar year, exceeds

"(ii) the CPI for 1992.

"(B) CPI FOR ANY CALENDAR YEAR.—The CPI for any calendar year shall be determined in the same manner as under section 1(f)(4).

"(4) APPLICABLE DOLLAR AMOUNT.—For purposes of this subsection, the term 'applicable dollar amount' means the dollar amount in effect under any of the following provisions:

"(A) Subsection (b)(1)(A).

"(B) Subsection (c)(2)(A)(i).

"(C) The last sentence of subsection (c)(2)."

(b) CONFORMING AMENDMENTS.—

(1) Section 408(a)(1) is amended by striking "in excess of $2,000 on behalf of any individual" and inserting "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)".

(2) Section 408(b)(2)(B) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(3) Section 408(j) is amended by striking "$2,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 2003. COORDINATION OF IRA DEDUCTION LIMIT WITH ELECTIVE DEFERRAL LIMIT.

(a) IN GENERAL.—Section 219(b) (relating to maximum amount of deduction) is amended by adding at the end thereof the following new paragraph:

"(4) COORDINATION WITH ELECTIVE DEFERRAL LIMIT.—The amount determined under paragraph (1) or subsection (c)(2) with respect to any individual for any taxable year shall not exceed the excess (if any) of—

"(A) the maximum amount of elective deferrals of the individual which are excludable from gross income for the taxable year under section 402(g)(1), over

"(B) the amount so excluded."

(b) CONFORMING AMENDMENT.—Section 219(c) is amended by adding at the end thereof the following new paragraph:

"(3) CROSS REFERENCE.—

"For reduction in paragraph (2) amount, see subsection (b)(4)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

Subpart B—Nondeductible Tax-Free IRAs

SEC. 2011. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

"SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) GENERAL RULE.—Except as provided in this section, a special individual retirement account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) SPECIAL INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this title, the term 'special individual retirement account' means an individual retirement plan which is designated at the time of establishment of the plan as a special individual retirement account.

"(c) TREATMENT OF CONTRIBUTIONS.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to a special individual retirement account.

"(2) CONTRIBUTION LIMIT.—The aggregate amount of contributions for any taxable year to all special individual retirement accounts maintained for the benefit of an individual shall not exceed the excess (if any) of—

"(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year, over

"(B) the amount so allowed.

"(3) SPECIAL RULES FOR QUALIFIED TRANSFERS.—

"(A) IN GENERAL.—No rollover contribution may be made to a special individual retirement account unless it is a qualified transfer.

"(B) LIMIT NOT TO APPLY.—The limitation under paragraph (2) shall not apply to a qualified transfer to a special individual retirement account.

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in this subsection, any amount paid or distributed out of a special individual retirement account shall not be included in the gross income of the distributee.

"(2) EXCEPTION FOR EARNINGS ON CONTRIBUTIONS HELD LESS THAN 5 YEARS.—

"(A) IN GENERAL.—Any amount distributed out of a special individual retirement account which consists of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution shall be included in the gross income of the distributee for the taxable year in which the distribution occurs.

"(B) ORDERING RULE.—

"(i) FIRST-IN, FIRST-OUT RULE.—Distributions from a special individual retirement account shall be treated as having been made—

"(I) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(II) then from other contributions (and earnings allocable thereto) in the order in which made.

"(ii) ALLOCATIONS BETWEEN CONTRIBUTIONS AND EARNINGS.—Any portion of a distribution allocated to a contribution (and earnings allocable thereto) shall be treated as allocated first to the earnings and then to the contribution.

"(iii) ALLOCATION OF EARNINGS.—Earnings shall be allocated to a contribution in such manner as the Secretary may by regulations prescribe.

"(iv) CONTRIBUTIONS IN SAME YEAR.—Except as provided in regulations, all contributions made during the same taxable year may be treated as 1 contribution for purposes of this subparagraph.

"(C) CROSS REFERENCE.—

"For additional tax for early withdrawal, see section 72(t).

"(3) QUALIFIED TRANSFER.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to any distribution which is transferred in a qualified transfer to another special individual retirement account.

"(B) CONTRIBUTION PERIOD.—For purposes of paragraph (2), the special individual retirement account to which any contributions are transferred shall be treated as having held such contributions during any period such contributions were held (or are treated as held under this subparagraph) by the special individual retirement account from which transferred.

"(4) SPECIAL RULES RELATING TO CERTAIN TRANSFERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a qualified transfer to a special individual retirement account from an individual retirement plan which is not a special individual retirement account—

"(i) there shall be included in gross income any amount which, but for the qualified transfer, would be includible in gross income, but

"(ii) section 72(t) shall not apply to such amount.

"(B) TIME FOR INCLUSION.—In the case of any qualified transfer which occurs before January 1, 1994, any amount includible in gross income under subparagraph (A) with respect to such contribution shall be includible ratably over the 4-taxable year period beginning in the taxable year in which the amount was paid or distributed out of the individual retirement plan.

"(e) QUALIFIED TRANSFER.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified transfer' means a transfer to a special individual retirement account from another such account or from an individual retirement plan but only if such transfer meets the requirements of section 408(d)(3).

"(2) LIMITATION.—A transfer otherwise described in paragraph (1) shall not be treated as a qualified transfer if the taxpayer's adjusted gross income for the taxable year of the transfer exceeds the sum of the applicable dollar amount plus $10,000. This paragraph shall not apply to a transfer from a special individual retirement account to another special individual retirement account.

"(3) DEFINITIONS.—For purposes of this subsection, the terms 'adjusted gross income' and 'applicable dollar amount' have the meanings given such terms by section 219(g)(3), except subparagraph (A)(ii) thereof shall be applied without regard to the phrase 'or the deduction allowable under this section'."

(b) EARLY WITHDRAWAL PENALTY.—Section 72(t), as amended by section 2021(c), is amended by adding at the end thereof the following new paragraph:

"(8) RULES RELATING TO SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.—In the case of a special individual retirement account under section 408A—

"(A) this subsection shall only apply to distributions out of such account which consist of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution, and

"(B) paragraph (2)(A)(i) shall not apply to any distribution described in subparagraph (A)."

(c) EXCESS CONTRIBUTIONS.—Section 4973(b) is amended by adding at the end thereof the following new sentence: "For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 408A."

(d) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

"Sec. 408A. Special individual retirement accounts."

(e) 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, 1993.

(2) QUALIFIED TRANSFERS IN 1993.—The amendments made by this section shall apply to any qualified transfer during any taxable year beginning in 1993.

PART II—PENALTY-FREE DISTRIBUTIONS

SEC. 2021. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PURCHASE FIRST HOMES, TO PAY HIGHER EDUCATION OR FINANCIALLY DEVASTATING MEDICAL EXPENSES, OR BY THE LONG-TERM UNEMPLOYED.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end thereof the following new subparagraph:

"(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii)—

"(i) which are qualified first-time homebuyer distributions (as defined in paragraph (6)); or

"(ii) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year.

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

(1) IN GENERAL.—Section 72(t)(3)(A) is amended by striking "(B),".

(2) CERTAIN LINEAL DESCENDANTS AND ANCESTORS TREATED AS DEPENDENTS.—Subparagraph (B) of section 72(t)(2) is amended by striking "medical care" and all that follows and inserting "medical care determined—

"(i) without regard to whether the employee itemizes deductions for such taxable year, and

"(ii) by treating such employee's dependents as including—

"(I) all children and grandchildren of the employee or such employee's spouse, and

"(II) all ancestors of the employee or such employee's spouse."

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 72(t)(2) is amended by striking "or (C)" and inserting ", (C) or (D)".

(c) DEFINITIONS.—Section 72(t) is amended by adding at the end thereof the following new paragraphs:

"(6) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(D)(i)—

"(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the spouse, child, or grandchild of such individual.

"(B) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(C) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if—

"(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

"(II) subsection (a)(6), (h), or (k) of section 1034 did not suspend the running of any period of time specified in section 1034 with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A)(ii).

In the case of an individual described in section 143(i)(1)(C) for any year, an ownership interest shall not include any interest under a contract of deed described in such section.

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting '120 days' for '60 days' in such section), except that—

"(i) section 408(d)(3)(B) shall not be applied to such contribution, and

"(ii) such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) applies to any other amount.

"(7) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(ii)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

at an eligible educational institution (as defined in section 135(c)(3)).

"(B) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135."

(d) PENALTY-FREE DISTRIBUTIONS FOR CERTAIN UNEMPLOYED INDIVIDUALS.—Paragraph (2) of section 72(t) is amended by adding at the end thereof the following new subparagraph:

"(E) DISTRIBUTIONS TO UNEMPLOYED INDIVIDUALS.—A distribution from an individual retirement plan (other than a plan referred to in subclause (I) or (II) of paragraph (6)(A)(iii)) to an individual after separation from employment, if—

"(i) such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation, and

"(ii) such distributions are made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year."

(e) SPECIAL RULE FOR CERTAIN DISASTER VICTIMS.—For purposes of section 72(t)(6) of the Internal Revenue Code of 1986, an individual whose principal residence was destroyed or substantially damaged by Hurricane Andrew, Hurricane Iniki, or Typhoon Omar shall be treated as a first-time homebuyer with respect to such residence if the individual rebuilds it or with respect to any other principal residence acquired to replace such residence.

(f) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) is amended by striking "or" at the end of subclause (III), by striking "and" at the end of subclause (IV) and inserting "or", and by inserting after subclause (IV) the following new subclause:

"(V) the date on which qualified first-time homebuyer distributions (as defined in section 72(t)(6)) or distributions for qualified higher education expenses (as defined in section 72(t)(7)) are made, and".

(2) Section 403(b)(11) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) for qualified first-time homebuyer distributions (as defined in section 72(t)(6)) or for the payment of qualified higher education expenses (as defined in section 72(t)(7))."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after December 31, 1992.

SEC. 2022. CONTRIBUTIONS MUST BE HELD AT LEAST 5 YEARS IN CERTAIN CASES.

(a) IN GENERAL.—Section 72(t), as amended by section 2011(b), is amended by adding at the end thereof the following new paragraph:

"(9) CERTAIN CONTRIBUTIONS MUST BE HELD 5 YEARS.—

"(A) IN GENERAL.—Paragraph (2)(A)(i) shall not apply to any amount distributed out of an individual retirement plan (other than a special individual retirement account) which is allocable to contributions made to the plan during the 5-year period ending on the date of such distribution (and earnings on such contributions).

"(B) ORDERING RULE.—For purposes of this paragraph, distributions shall be treated as having been made—

"(i) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(ii) then from other contributions (and earnings allocable thereto) in the order in which made.

Earnings shall be allocated to contributions in such manner as the Secretary may prescribe.

"(C) SPECIAL RULE FOR ROLLOVERS.—

"(i) PENSION PLANS.—Subparagraph (A) shall not apply to distributions out of an individual retirement plan which are allocable to rollover contributions to which section 402(c), 403(a)(4), or 403(b)(8) applied.

"(ii) CONTRIBUTION PERIOD.—For purposes of subparagraph (A), amounts shall be treated as having been held by a plan during any period such contributions were held (or are treated as held under this clause) by any individual retirement plan from which transferred.

"(D) SPECIAL ACCOUNTS.—For rules applicable to special individual retirement accounts under section 408A, see paragraph (8)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions (and earnings allocable thereto) which are made after December 31, 1993.

Subtitle B—Economic Development Provisions

PART I—INVESTMENT IN REAL ESTATE

Subpart A—Modification of Passive Loss Rules

SEC. 2101. APPLICATION OF PASSIVE LOSS RULES TO RENTAL REAL ESTATE ACTIVITIES.

(a) RENTAL REAL ESTATE ACTIVITIES OF PERSONS IN REAL PROPERTY BUSINESS NOT AUTOMATICALLY TREATED AS PASSIVE ACTIVITIES.—Subsection (c) of section 469 (defining passive activity) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR TAXPAYERS IN REAL PROPERTY BUSINESS—

"(A) IN GENERAL.—If this paragraph applies to any taxpayer for a taxable year—

"(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and

"(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii), a taxpayer may elect to treat all interests in rental real estate as one activity. Nothing in the preceding provisions of this subparagraph shall be construed as affecting the determination of whether the taxpayer materially participates with respect to any interest in a limited partnership as a limited partner.

"(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to a taxpayer for a taxable year if more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates.

"(C) REAL PROPERTY TRADE OR BUSINESS.—For purposes of this paragraph, the term 'real property trade or business' means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

"(D) SPECIAL RULES FOR SUBPARAGRAPH (B).—

"(i) CLOSELY HELD C CORPORATIONS.—In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.

"(ii) PERSONAL SERVICES AS AN EMPLOYEE.—For purposes of subparagraph (B), personal services performed as an employee shall not be treated as performed in real property trades or businesses. The preceding sentence shall not apply if such employee is a 5-

percent owner (as defined in section 416(i)(1)(B)) in the employer."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 469(c) is amended by striking "The" and inserting "Except as provided in paragraph (7), the".

(2) Clause (iv) of section 469(i)(3)(E) is amended by inserting "or any loss allowable by reason of subsection (c)(7)" after "loss".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

Subpart B—Provisions Relating to Real Estate Investments by Pension Funds

SEC. 2111. REAL ESTATE PROPERTY ACQUIRED BY A QUALIFIED ORGANIZATION.

(a) MODIFICATIONS OF EXCEPTIONS.—Paragraph (9) of section 514(c) (relating to real property acquired by a qualified organization) is amended by adding at the end thereof the following new subparagraphs:

"(G) SPECIAL RULES FOR PURPOSES OF THE EXCEPTIONS.—Except as otherwise provided by regulations—

"(i) SMALL LEASES DISREGARDED.—For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in such clause (iii) or (iv) shall be disregarded if no more than 25 percent of the leasable floor space in a building is covered by the lease and if the lease is on commercially reasonable terms.

"(ii) COMMERCIALLY REASONABLE FINANCING.—Clause (v) of subparagraph (B) shall not apply if the financing is on commercially reasonable terms.

"(H) QUALIFYING SALES BY FINANCIAL INSTITUTIONS.—

"(i) IN GENERAL.—In the case of a qualifying sale by a financial institution, except as provided in regulations, clauses (i) and (ii) of subparagraph (B) shall not apply with respect to financing provided by such institution for such sale.

"(ii) QUALIFYING SALE.—For purposes of this clause, there is a qualifying sale by a financial institution where—

"(I) a qualified organization acquires property described in clause (iii) from a financial institution and any gain recognized by the financial institution with respect to the property is ordinary income,

"(II) the stated principal amount of the financing provided by the financial institution does not exceed the amount of the outstanding indebtedness (including accrued but unpaid interest) of the financial institution with respect to the property described in clause (iii) immediately before the acquisition referred to in clause (iii) or (v), whichever is applicable, and

"(III) the value (determined as of the time of the sale) of the amount pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property does not exceed 30 percent of the value of the property (determined as of such time).

"(iii) PROPERTY TO WHICH SUBPARAGRAPH APPLIES.—Property is described in this clause if such property is foreclosure property, or is real property which—

"(I) was acquired by the qualified organization from a financial institution which is in conservatorship or receivership, or from the conservator or receiver of such an institution, and

"(II) was held by the financial institution at the time it entered into conservatorship or receivership.

"(iv) FINANCIAL INSTITUTION.—For purposes of this subparagraph, the term 'financial institution' means—

"(I) any financial institution described in section 581 or 591(a),

"(II) any other corporation which is a direct or indirect subsidiary of an institution referred to in subclause (I) but only if, by virtue of being affiliated with such institution, such other corporation is subject to supervision and examination by a Federal or State agency which regulates institutions referred to in subclause (I), and

"(III) any person acting as a conservator or receiver of an entity referred to in subclause (I) or (II) (or any government agency or corporation succeeding to the rights or interest of such person).

"(v) FORECLOSURE PROPERTY.—For purposes of this subparagraph, the term 'foreclosure property' means any real property acquired by the financial institution as the result of having bid on such property at foreclosure, or by operation of an agreement or process of law, after there was a default (or a default was imminent) on indebtedness which such property secured."

(b) CONFORMING AMENDMENT.—Paragraph (9) of section 514(c) is amended—

(1) by adding the following new sentence at the end of subparagraph (A): "For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.", and

(2) by striking the last sentence of subparagraph (B).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to acquisitions on or after October 1, 1992.

(2) SMALL LEASES.—The provisions of section 514(c)(9)(G)(i) of the Internal Revenue Code of 1986 shall, in addition to any leases to which the provisions apply by reason of paragraph (1), apply to leases entered into on or after October 1, 1992.

SEC. 2112. SPECIAL RULES FOR INVESTMENTS IN PARTNERSHIPS.

(a) MODIFICATION TO ANTI-ABUSE RULES.—Paragraph (9) of section 514(c) (as amended by section 2211) is amended by adding at the end thereof the following new subparagraph:

"(J) PARTNERSHIPS NOT INVOLVING TAX AVOIDANCE.—

"(i) DE MINIMIS RULE FOR CERTAIN LARGE PARTNERSHIPS.—The provisions of subparagraph (B) shall not apply to an investment in a partnership having at least 250 partners if—

"(I) interests in such partnership were offered for sale in an offering registered with the Securities and Exchange Commission,

"(II) at least 50 percent of each class of interests in such partnership is owned by individuals who are not disqualified persons, and

"(III) the principal purpose of partnership allocations is not tax avoidance.

The Secretary may disregard inadvertent failures to meet the requirements of subclause (II). For purposes of subclause (II), interests owned by individual retirement plans (as defined in section 7701(a)(37)) shall not be taken into account.

"(ii) DISQUALIFIED PERSONS.—For purposes of this subparagraph, the term 'disqualified person' means any person described in clause (iii) or (iv) of subparagraph (B) and any person who is not a United States person."

(b) REPEAL OF SPECIAL TREATMENT OF PUBLICLY TRADED PARTNERSHIPS.—Subsection (c) of section 512 is amended—

(1) by striking paragraph (2),

(2) by redesignating paragraph (3) as paragraph (2), and

(3) by striking "paragraph (1) or (2)" in paragraph (2) (as so redesignated) and inserting "paragraph (1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership years ending after October 1, 1992.

SEC. 2113. TITLE-HOLDING COMPANIES PERMITTED TO RECEIVE SMALL AMOUNTS OF UNRELATED BUSINESS TAXABLE INCOME.

(a) GENERAL RULE.—Paragraph (25) of section 501(c) is amended by adding at the end thereof the following new subparagraph:

"(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

"(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income."

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 501(c) is amended by adding at the end thereof the following new sentence:

"Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 2114. EXCLUSION FROM UNRELATED BUSINESS TAX OF GAINS FROM CERTAIN PROPERTY.

(a) General Rule.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end thereof the following new paragraph:

"(16)(A) Notwithstanding paragraph (5)(B), there shall be excluded all gains or losses from the sale, exchange, or other disposition of any real property described in subparagraph (B) if—

"(i) such property was acquired by the organization from—

"(I) a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or

"(II) the conservator or receiver of such an institution (or any government agency or corporation succeeding to the rights or interests of the conservator or receiver),

"(ii) such property is designated by the organization within the 9-month period beginning on the date of its acquisition as property held for sale, except that not more than one-half (by value determined as of such date) of property acquired in a single transaction may be so designated,

"(iii) such sale, exchange, or disposition occurs before the later of—

"(I) the date which is 30 months after the date of the acquisition of such property, or

"(II) the date specified by the Secretary in order to assure an orderly disposition of property held by persons described in subparagraph (A), and

"(iv) while such property was held by the organization, the aggregate expenditures on improvements and development activities included in the basis of the property are (or were not) in excess of 20 percent of the net selling price of the property with respect to such property.

"(B) Property is described in this subparagraph if it is real property which—

"(i) was held by the financial institution at the time it entered into conservatorship or receivership, or

"(ii) was foreclosure property (as defined in section 514(c)(9)(H)(v)) which secured indebtedness held by the financial institution at such time.

For purposes of this subparagraph, real property includes an interest in a mortgage."

(b) Effective Date.—The amendment made by subsection (a) shall apply to property acquired on or after October 1, 1992.

SEC. 2115. EXCLUSION FROM UNRELATED BUSINESS TAX OF CERTAIN FEES AND OPTION PREMIUMS.

(a) Loan Commitment Fees.—Paragraph (1) of section 512(b) (relating to modifications) is amended by inserting "amounts re-

ceived or accrued as consideration for entering into agreements to make loans," before "and annuities".

(b) OPTION PREMIUMS.—The second sentence of section 512(b)(5) is amended by inserting "or real property" before the period.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received on or after October 1, 1992.

SEC. 2116. TREATMENT OF PENSION FUND INVESTMENTS IN REAL ESTATE INVESTMENT TRUSTS.

(a) GENERAL RULE.—Subsection (h) of section 856 (relating to closely held determinations) is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF TRUSTS DESCRIBED IN SECTION 401(a).—

"(A) LOOK-THRU TREATMENT.—

"(i) IN GENERAL.—Except as provided in clause (ii), in determining whether the stock ownership requirement of section 542(a)(2) is met for purposes of paragraph (1)(A), any stock held by a qualified trust shall be treated as held directly by its beneficiaries in proportion to their actuarial interests in such trust and shall not be treated as held by such trust.

"(ii) CERTAIN RELATED TRUSTS NOT ELIGIBLE.—Clause (i) shall not apply to any qualified trust if one or more disqualified persons (as defined in section 4975(e)(2), without regard to subparagraphs (B) and (I) thereof) with respect to such qualified trust hold in the aggregate 5 percent or more in value of the interests in the real estate investment trust and such real estate investment trust has accumulated earnings and profits attributable to any period for which it did not qualify as a real estate investment trust.

"(B) COORDINATION WITH PERSONAL HOLDING COMPANY RULES.—If any entity qualifies as a real estate investment trust for any taxable year by reason of subparagraph (A), such entity shall not be treated as a personal holding company for such taxable year for purposes of part II of subchapter G of this chapter.

"(C) TREATMENT FOR PURPOSES OF UNRELATED BUSINESS TAX.—If any qualified trust holds more than 10 percent (by value) of the interests in any pension-held REIT at any time during a taxable year, the trust shall be treted as having for such taxable year gross income from an unrelated trade or business in an amount which bears the same ratio to the aggregate dividends paid (or treated as paid) by the REIT to the trust for the taxable year of the REIT with or within which the taxable year of the trust ends (the 'REIT year') as—

"(i) the gross income (less direct expenses related thereto) of the REIT for the REIT year from unrelated trades or businesses (determined as if the REIT were a qualified trust), bears to

"(ii) the gross income (less direct expenses related thereto) of the REIT for the REIT year.

This subparagraph shall apply only if the ratio determined under the preceding sentence is at least 5 percent.

"(D) PENSION-HELD REIT.—The purposes of subparagraph (C)—

"(i) IN GENERAL.—A real estate investment trust is a pension-held REIT if such trust would not have qualified as a real estate investment trust but for the provisions of this paragraph and if such trust is predominantly held by qualified trusts.

"(ii) PREDOMINANTLY HELD.—For purposes of clause (i), a real estate investment trust is predominantly held by qualified trusts if—

"(I) at least 1 qualified trust holds more than 25 percent (by value) of the interests in such real estate investment trust, or

"(II) 1 or more qualified trusts (each of whom own more than 10 percent by value of the interests in such real estate investment trust) hold in the aggregate more than 50 percent (by value) of the interests in such real estate investment trust.

"(E) QUALIFIED TRUST.—For purposes of this paragraph, the term 'qualified trust' means any trust described in section 401(a) and exempt from tax under section 501(a)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1991.

Subpart C—Discharge of Indebtedness

SEC. 2121. EXCLUSION FROM GROSS INCOME FOR INCOME FROM DISCHARGE OF QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.

(a) IN GENERAL.—Paragraph (1) of section 108(a) (relating to income from discharge of indebtedness) is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or", and by adding at the end the following new subparagraph:

"(D) in the case of an individual, the indebtedness discharged is qualified real property business indebtedness."

(b) QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—Section 108 is amended by inserting after subsection (b) the following new subsection:

"(c) TREATMENT OF DISCHARGE OF QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—

"(1) BASIS REDUCTION.—

"(A) IN GENERAL.—The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

"(B) CROSS REFERENCE.—For provisions making the reduction described in subparagraph (A), see section 1017.

"(2) LIMITATIONS.—

"(A) INDEBTEDNESS IN EXCESS OF VALUE.—The amount excluded under subparagraph (D) of subsection (a)(1) with

respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

"(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

"(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

"(B) OVERALL LIMITATION.—The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

"(3) QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—The term 'qualified real property business indebtedness' means indebtedness which—

"(A) was incurred or assumed by an individual in connection with real property used in a trade or business and is secured by such real property,

"(B) was incurred or assumed before July 30, 1992, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

"(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

"(4) QUALIFIED ACQUISITION INDEBTEDNESS.—For purposes of paragraph (3)(B), the term 'qualified acquisition indebtedness' means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

"(5) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means."

(c) TECHNICAL AMENDMENTS.—

(1) Subparagraph (A) of section 108(a)(2) is amended by striking "and (C)" and inserting ", (C), and (D)".

(2) Subparagraph (B) of section 108(a)(2) is amended to read as follows:

"(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED FARM EXCLUSION AND QUALIFIED REAL PROPERTY BUSINESS EXCLUSION.—Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent."

(3) Subsection (d) of section 108 is amended by striking "Subsections (a), (b), and (g)" each place it appears in the head-

ing thereof and in the text and headings of paragraphs (6) and (7)(A) and inserting "Subsections (a), (b), (c), and (g)".

(4) Subparagraph (B) of section 108(d)(7) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge."

(5) Subparagraph (A) of section 108(d)(9) is amended by inserting "or under paragraph (3)(B) of subsection (c)" after "subsection (b)".

(6) Paragraph (2) of section 1017(a) is amended by striking "or (b)(5)" and inserting ", (b)(5), or (c)(1)".

(7) Subparagraph (A) of section 1017(b)(3) is amended by inserting "or (c)(1)" after "subsection (b)(5)".

(8) Section 1017(b)(3) is amended by adding at the end the following new subparagraph:

"(F) SPECIAL RULES FOR QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—In the case of any amount which under section 108(c)(1) is to be applied to reduce basis—

"(i) depreciable property shall only include depreciable real property for purposes of subparagraphs (A) and (C),

"(ii) subparagraph (E) shall not apply, and

"(iii) in the case of property taken into account under section 108(c)(2)(B), the reduction with respect to such property shall be made as of the time immediately before disposition if earlier than the time under subsection (a)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges after December 31, 1991, in taxable years ending after such date.

PART II—EXTENSION OF CERTAIN EXPIRING TAX PROVISIONS

SEC. 2131. RESEARCH CREDIT.

(a) IN GENERAL.—Subsection (h) of section 41 (relating to credit for increasing research activities) is amended—

(1) by striking "June 30, 1992" and inserting "June 30, 1993", and

(2) by striking "July 1, 1992" and inserting "July 1, 1993".

(b) CONFORMING AMENDMENT.—Subparagraph (D) of section 28(b)(1) is amended by striking "June 30, 1992" and inserting "June 30, 1993".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after June 30, 1992.

SEC. 2132. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking "June 30, 1992" and inserting "June 30, 1993".

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 103(a) of the Tax Extension Act of 1991 is amended by striking "1992" each place it appears and inserting "1993".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after June 30, 1992.

SEC. 2133. EXCISE TAX ON CERTAIN VACCINES.

(a) TAX.—Paragraphs (2) and (3) of section 4131(c) (relating to tax on certain vaccines) are each amended by striking "1992" each place it appears and inserting "1994".

(b) TRUST FUND.—Paragraph (1) of section 9510(c) (relating to expenditures from Vaccine Injury Compensation Trust Fund) is amended by striking "1992" and inserting "1994".

(c) STUDY.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study of—

(1) the estimated amount that will be paid from the Vaccine Injury Compensation Trust Fund with respect to vaccines administered after September 30, 1988, and before October 1, 1994,

(2) the rates of vaccine-related injury or death with respect to the various types of such vaccines,

(3) new vaccines and immunization practices being developed or used for which amounts may be paid from such Trust Fund,

(4) whether additional vaccines should be included in the vaccine injury compensation program, and

(5) the appropriate treatment of vaccines produced by State governmental entities.

The report of such study shall be submitted not later than January 1, 1994, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 2134. CERTAIN TRANSFERS TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended by striking "with respect to benefits received before October 1, 1992".

SEC. 2135. HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (6) of section 162(l) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "June 30, 1992" and inserting "June 30, 1993".

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 110(a) of the Tax Extension Act of 1991 is amending by striking "1992" each place it appears and inserting "1993".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after June 30, 1992.

SEC. 2136. TAX CREDIT FOR ORPHAN DRUG CLINICAL TESTING EXPENSES.

(a) IN GENERAL.—Subsection (e) of section 28 (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking "June 30, 1992" and inserting "June 30, 1993".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after June 30, 1992.

SEC. 2137. QUALIFIED SMALL ISSUE BONDS.

Subparagraph (B) of section 144(a)(12) (relating to termination dates) is amended by striking "June 30, 1992" and inserting "September 30, 1993".

PART III—OTHER INCENTIVES

SEC. 2151. ELIMINATION OF ACE DEPRECIATION ADJUSTMENT.

(a) IN GENERAL.—Clause (i) of section 56(g)(4)(A) (relating to depreciation adjustments for computing adjusted current earnings) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to property placed in service in taxable years beginning after the date of the enactment of the Revenue Act of 1992, and the depreciation deduction with respect to such property shall be determined under the rules of subsection (a)(1)(A)."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service in taxable years beginning after the date of the enactment of this Act.

(2) COORDINATION WITH TRANSITIONAL RULES.—The amendments made by this section shall not apply to any property to which paragraph (1) of section 56(a) of the Internal Revenue Code of 1986 does not apply by reason of subparagraph (C)(i) of such paragraph (1).

Subtitle C—Repeal of Certain Luxury Excise Taxes; Imposition of Tax on Diesel Fuel Used in Noncommercial Boats

SEC. 2201. REPEAL OF LUXURY EXCISE TAXES OTHER THAN ON PASSENGER VEHICLES.

(a) IN GENERAL.—Subchapter A of chapter 31 (relating to retail excise taxes) is amended to read as follows:

"Subchapter A—Luxury Passenger Automobiles

"Sec. 4001. Imposition of tax.
"Sec. 4002. 1st retail sale; uses, etc. treated as sales; determination of price.
"Sec. 4003. Special rules.

"SEC. 4001. IMPOSITION OF TAX.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $30,000.

"(b) PASSENGER VEHICLE.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'passenger vehicle' means any 4-wheeled vehicle—

"(A) which is manufactured primarily for use on public streets, roads, and highways, and

"(B) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

"(2) SPECIAL RULES.—

"(A) TRUCKS AND VANS.—In the case of a truck or van, paragraph (1)(B) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'.

"(B) LIMOUSINES.—In the case of a limousine, paragraph (1) shall be applied without regard to subparagraph (B) thereof.

"(c) EXCEPTIONS FOR TAXICABS, ETC.—The tax imposed by this section shall not apply to the sale of any passenger vehicle for use by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

"(d) EXEMPTION FOR LAW ENFORCEMENT USES, ETC.—No tax shall be imposed by this section on the sale of any passenger vehicle—

"(1) to the Federal Government, or a State or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities, or

"(2) to any person for use exclusively in providing emergency medical services.

"(e) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any calendar year after 1991, the $30,000 amount in subsection (a) and section 4003(a) shall be increased by an amount equal to—

"(A) $30,000, multiplied by

"(B) the cost-of-living adjustment under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 1990' for 'calendar year 1989' in subparagraph (B) thereof.

"(2) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100 (or, if such amount is a multiple of $50 and not of $100, such amount shall be rounded to the next highest multiple of $100).

"(f) TERMINATION.—The tax imposed by this section shall not apply to any sale or use after December 31, 1999.

"SEC. 4002. 1ST RETAIL SALE; USES, ETC. TREATED AS SALES; DETERMINATION OF PRICE.

"(a) 1ST RETAIL SALE.—For purposes of this subchapter, the term '1st retail sale' means the 1st sale, for a purpose other than resale, after manufacture, production, or importation.

"(b) USE TREATED AS SALE.—

"(1) IN GENERAL.—If any person uses a passenger vehicle (including any use after importation) before the 1st retail sale of such vehicle, then such person shall be liable for tax under this subchapter in the same manner as if such vehicle were sold at retail by him.

"(2) EXEMPTION FOR FURTHER MANUFACTURE.—Paragraph (1) shall not apply to use of a vehicle as material in the manufacture or production of, or as a component part of, another vehicle taxable under this subchapter to be manufactured or produced by him.

"(3) EXEMPTION FOR DEMONSTRATION USE.—Paragraph (1) shall not apply to any use of a passenger vehicle as a demonstrator for a potential customer.

"(4) EXCEPTION FOR USE AFTER IMPORTATION OF CERTAIN VEHICLES.—Paragraph (1) shall not apply to the use of a vehicle after importation if the user or importer establishes to the satisfaction of the Secretary that the 1st use of the vehicle occurred before January 1, 1991, outside the United States.

"(5) COMPUTATION OF TAX.—In the case of any person made liable for tax by paragraph (1), the tax shall be computed on the price at which similar vehicles are sold at retail in the ordinary course of trade, as determined by the Secretary.

"(c) LEASES CONSIDERED AS SALES.—For purposes of this subchapter—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the lease of a vehicle (including any renewal or any extension of a lease or any subsequent lease of such vehicle) by any person shall be considered a sale of such vehicle at retail.

"(2) SPECIAL RULES FOR LONG-TERM LEASES.—

"(A) TAX NOT IMPOSED ON SALE FOR LEASING IN A QUALIFIED LEASE.—The sale of a passenger vehicle to a person engaged in a passenger vehicle leasing or rental trade or business for leasing by such person in a long-term lease shall not be treated as the 1st retail sale of such vehicle.

"(B) LONG-TERM LEASE.—For purposes of subparagraph (A), the term 'long-term lease' means any long-term lease (as defined in section 4052).

"(C) SPECIAL RULES.—In the case of a long-term lease of a vehicle which is treated as the 1st retail sale of such vehicle—

"(i) DETERMINATION OF PRICE.—The tax under this subchapter shall be computed on the lowest price for which the vehicle is sold by retailers in the ordinary course of trade.

"(ii) PAYMENT OF TAX.—Rules similar to the rules of section 4217(e)(2) shall apply.

"(iii) NO TAX WHERE EXEMPT USE BY LESSEE.—No tax shall be imposed on any lease payment under a long-term lease if the lessee's use of the vehicle under such lease is an exempt use (as defined in section 4003(b)) of such vehicle.

"(d) DETERMINATION OF PRICE.—

"(1) IN GENERAL.—In determining price for purposes of this subchapter—

"(A) there shall be included any charge incident to placing the article in condition ready for use,

"(B) there shall be excluded—

"(i) the amount of the tax imposed by this subchapter,

"(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, wheth-

er the liability for such tax is imposed on the vendor or vendee, and

"(iii) the value of any component of such article if—

"(I) such component is furnished by the 1st user of such article, and

"(II) such component has been used before such furnishing, and

"(C) the price shall be determined without regard to any trade-in.

"(2) OTHER RULES.—Rules similar to the rules of paragraphs (2) and (4) of section 4052(b) shall apply for purposes of this subchapter.

"SEC. 4003. SPECIAL RULES.

"(a) SEPARATE PURCHASE OF VEHICLE AND PARTS AND ACCESSORIES THEREFOR.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—Except as provided in paragraph (2), if—

"(A) the owner, lessee, or operator of any passenger vehicle installs (or causes to be installed) any part or accessory on such vehicle, and

"(B) such installation is not later than the date 6 months after the date the vehicle was 1st placed in service, then there is hereby imposed on such installation a tax equal to 10 percent of the price of such part or accessory and its installation.

"(2) LIMITATION.—The tax imposed by paragraph (1) on the installation of any part or accessory shall not exceed 10 percent of the excess (if any) of—

"(A) the sum of—

"(i) the price of such part or accessory and its installation,

"(ii) the aggregate price of the parts and accessories (and their installation) installed before such part or accessory, plus

"(iii) the price for which the passenger vehicle was sold, over

"(B) $30,000.

"(3) EXCEPTIONS.—Paragraph (1) shall not apply if—

"(A) the part or accessory installed is a replacement part or accessory,

"(B) the part or accessory is installed to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or

"(C) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to the vehicle does not exceed $200 (or such other amount or amounts as the Secretary may by regulation prescribe).

"(4) INSTALLERS SECONDARILY LIABLE FOR TAX.—The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by this subsection.

"(b) IMPOSITION OF TAX ON SALES, ETC., WITHIN 2 YEARS OF VEHICLES PURCHASED TAX-FREE.—

"(1) IN GENERAL.—If—

"(A) no tax was imposed under this subchapter on the 1st retail sale of any passenger vehicle by reason of its exempt use, and

"(B) within 2 years after the date of such 1st retail sale, such vehicle is resold by the purchaser or such purchaser makes a substantial nonexempt use of such vehicle,

then such sale or use of such vehicle by such purchaser shall be treated as the 1st retail sale of such vehicle for a price equal to its fair market value at the time of such sale or use.

"(2) EXEMPT USE.—For purposes of this subsection, the term 'exempt use' means any use of a vehicle if the 1st retail sale of such vehicle is not taxable under this subchapter by reason of such use.

"(c) PARTS AND ACCESSORIES SOLD WITH TAXABLE ARTICLE.—Parts and accessories sold on, in connection with, or with the sale of any passenger vehicle shall be treated as part of the vehicle.

"(d) PARTIAL PAYMENTS, ETC.—In the case of a contract, sale, or arrangement described in paragraph (2), (3), or (4) of section 4216(c), rules similar to the rules of section 4217(e)(2) shall apply for purposes of this subchapter."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 4221 is amended by striking "4002(b), 4003(c), 4004(a)" and inserting "4001(d)".

(2) Subsection (d) of section 4222 is amended by striking "4002(b), 4003(c), 4004(a)" and inserting "4001(d)".

(3) The table of subchapters for chapter 31 is amended by striking the item relating to subchapter A and inserting the following:

"Subchapter A. Luxury passenger vehicles."

(c) TECHNICAL AMENDMENTS.—Paragraph (3) of section 4004(b) (relating to separate purchase of article and parts and accessories therefor), as in effect before the date described in subsection (d)(1), is amended—

(1) by striking "or" at the end of subparagraph (A),

(2) by redesignating subparagraph (B) as subparagraph (C), and

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

"(B) the part or accessory is installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall take effect on January 1, 1992.

(2) INDEXING FOR INFLATION.—Subsection (e) of section 4001 of the Internal Revenue Code of 1986 (relating to inflation adjustment), as added by this section, shall apply with respect to passenger vehicles (as defined in such section 4001) purchased on or after October 1, 1992.

(3) DEMONSTRATOR VEHICLES.—Subsection (b)(3) of section 4002 of the Internal Revenue Code of 1986 (relating to exemption for demonstration use), as added by this section, shall apply with respect to passenger vehicles (as defined in such section 4001) the use of which begins on or after July 1, 1992.

(4) CERTAIN EQUIPMENT FOR USE BY DISABLED INDIVIDUALS.—The amendments made by subsection (c) shall take effect as if included in the amendments made by section 11221(a) of the Omnibus Budget Reconciliation Act of 1990.

SEC. 2202. TAX ON DIESEL FUEL USED IN NONCOMMERCIAL BOATS.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 4092(a) (defining diesel fuel) is amended by striking "or a diesel-powered train" and inserting ", a diesel-powered train, or a diesel-powered boat".

(2) Paragraph (1) of section 4041(a) is amended—

(A) by striking "diesel-powered highway vehicle" each place it appears and inserting "diesel-powered highway vehicle or diesel-powered boat", and

(B) by striking "such vehicle" and inserting "such vehicle or boat".

(3) Subparagraph (B) of section 4092(b)(1) is amended by striking "commercial and noncommercial vessels" each place it appears and inserting "vessels for use in an off-highway business use (as defined in section 6421(e)(2)(B))".

(b) EXEMPTION FOR USE IN FISHERIES OR COMMERCIAL NAVIGATION.—Subparagraph (B) of section 6421(e)(2) is amended to read as follows:

"(B) USES IN BOATS.—The term 'off-highway business use' does not include any use in a motorboat; except that such term shall include any use in—

"(i) a vessel employed in the fisheries or in the whaling business, and

"(ii) in the case of diesel fuel, a boat employed in the active conduct of—

"(I) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or

"(II) any other trade or business unless the boat is used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement, or recreation."

(c) RETENTION OF TAXES IN GENERAL FUND.—

(1) TAXES IMPOSED AT HIGHWAY TRUST FUND FINANCING RATE.—Paragraph (4) of section 9503(b) (relating to transfers to Highway Trust Fund) is amended—

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

(B) by striking the period at the end of subparagraph (B) and inserting ", and", and

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

"(C) there shall not be taken into account the taxes imposed by sections 4041 and 4091 on diesel fuel sold for use or used as fuel in a diesel-powered boat."

(2) TAXES IMPOSED AT LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—Subsection (b) of section 9508 (relating to transfers to Leaking Underground Storage Tank Trust Fund) is amended by adding at the end thereof the following flush sentence:

"For purposes of this subsection, there shall not be taken into account the taxes imposed by sections 4041 and 4091 on diesel fuel sold for use or used as fuel in a diesel-powered boat."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold or used on or after January 1, 1993, and before October 1, 1997.

Subtitle D—Credit for Portion of Employer Social Security Taxes Paid With Respect to Employee Cash Tips

SEC. 2301. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

"(a) GENERAL RULE.—For purposes of section 38, the employer social security credit determined under this section for the taxable year is an amount equal to the excess employer social security tax paid or incurred by the taxpayer during the taxable year.

"(b) EXCESS EMPLOYER SOCIAL SECURITY TAX.—For purposes of this section, the term 'excess employer social security tax' means any tax paid by an employer under section 3111 with respect to tips received by an employee during any month, to the extent such tips—

"(1) are deemed to have been paid by the employer to the employee pursuant to section 3121(q), and

"(2) exceed the amount by which the wages (excluding tips) paid by the employer to the employee during such month are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (determined without regard to section 3(m) of such Act).

"(c) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section."

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38 (relating to current year business credit) is amended by striking "plus" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting ", plus", and by adding at the end the following new paragraph:

"(9) the employer social security credit determined under section 45(a)."

(2) LIMITATION ON CARRYBACKS.—Subsection (d) of section 39 (relating to transitional rules) is amended by adding at the end the following new paragraph:

"(4) NO CARRYBACK OF SECTION 45 CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the employer social security credit determined under section 45 may be carried back to a taxable year ending before the date of the enactment of section 45."

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45. employer social security credit."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxes paid after December 31, 1992.

TITLE III—OFFSETTING REVENUE INCREASES

Subtitle A—General Provisions

SEC. 3001. MARK TO MARKET ACCOUNTING METHOD FOR SECURITIES DEALERS.

(a) GENERAL RULE.—Subpart D of part II of subchapter E of chapter 1 (relating to inventories) is amended by adding at the end thereof the following new section:

"SEC. 475. MARK TO MARKET ACCOUNTING METHOD FOR DEALERS IN SECURITIES.

"(a) GENERAL RULE.—Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

"(1) Any security which is inventory in the hands of the dealer shall be included in inventory at its fair market value.

"(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

"(A) the dealer shall recognize gain or loss as if such security were sold for its fair market value on the last business day of such taxable year, and

"(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

"(b) EXCEPTIONS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to—

"(A) any security held for investment,

"(B)(i) any security described in subsection (c)(2)(C) which is acquired (including originated) by the taxpayer in the ordinary course of a trade or business of the taxpayer

and which is not held for sale, and (ii) any obligation to acquire a security described in clause (i) if such obligation is entered into in the ordinary course of such trade or business and is not held for sale, and

"(C) any security which is a hedge with respect to—

"(i) a security to which subsection (a) does not apply, or

"(ii) a position, right to income, or a liability which is not a security in the hands of the taxpayer.

To the extent provided in regulations, subparagraph (C) shall not apply to any security held by a person in its capacity as a dealer in securities.

"(2) IDENTIFICATION REQUIRED.—A security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) SECURITIES SUBSEQUENTLY NOT EXEMPT.—If a security ceases to be described in paragraph (1) at any time after it was identified as such under paragraph (2), subsection (a) shall apply to any changes in value of the security occurring after the cessation.

"(4) SPECIAL RULE FOR PROPERTY HELD FOR INVESTMENT.—To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

"(c) DEFINITIONS.—For purposes of this section—

"(1) DEALER IN SECURITIES DEFINED.—The term 'dealer in securities' means a taxpayer who—

"(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

"(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

"(2) SECURITY DEFINED.—The term 'security' means any—

"(A) share of stock in a corporation;

"(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

"(C) note, bond, debenture, or other evidence of indebtedness;

"(D) interest rate, currency, or equity notional principal contract;

"(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), or any currency, including any option, forward contract, short position, and any similar financial instrument in such a security or currency; and

"(F) position which—

"(i) is not a security described in subparagraph (A), (B), (C), (D), or (E),

"(ii) is a hedge with respect to such a security, and

"(iii) is clearly identified in the dealer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

Subparagraph (E) shall not include any contract to which section 1256(a) applies.

"(3) HEDGE.—The term 'hedge' means any position which reduces the dealer's risk of interest rate or price changes or currency fluctuations, including any position which is reasonably expected to become a hedge within 60 days after the acquisition of the position.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) COORDINATION WITH CERTAIN RULES.—The rules of sections 263(g), 263A, and 1256(a) shall not apply to securities to which subsection (a) applies, and section 1091 shall not apply (and section 1092 shall apply) to any loss recognized under subsection (a).

"(2) IMPROPER IDENTIFICATION.—If a taxpayer—

"(A) identifies any security under subsection (b)(2) as being described in subsection (b)(1) and such security is not so described, or

"(B) fails under subsection (c)(2)(F)(iii) to identify any position which is described in subsection (c)(2)(F) (without regard to clause (iii) thereof) at the time such identification is required,

the provisions of subsection (a) shall apply to such security or position, except that any loss under this section prior to the disposition of the security or position shall be recognized only to the extent of gain previously recognized under this section (and not previously taken into account under this paragraph) with respect to such security or position.

"(3) CHARACTER OF GAIN OR LOSS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) or section 1236(b)—

"(i) IN GENERAL.—Any gain or loss with respect to a security under subsection (a)(2) shall be treated as ordinary income or loss.

"(ii) SPECIAL RULE FOR DISPOSITIONS.—If—

"(I) gain or loss is recognized with respect to a security before the close of the taxable year, and

"(II) subsection (a)(2) would have applied if the security were held as of the close of the taxable year,

such gain or loss shall be treated as ordinary income or loss.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any gain or loss which is allocable to a period during which—

"(i) the security is described in subsection (b)(1)(C) (without regard to subsection (b)(2)),

"(ii) the security is held by a person other than in connection with its activities as a dealer in securities, or

"(iii) the security is improperly identified (within the meaning of subparagraph (A) or (B) of paragraph (2)).

"(e) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules—

"(1) to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section, and

"(2) to provide for the application of this section to any security which is a hedge which cannot be identified with a specific security, position, right to income, or liability."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 988(d) is amended—

(A) by striking "section 1256" and inserting "section 475 or 1256", and

(B) by striking "1092 and 1256" and inserting "475, 1092, and 1256".

(2) The table of sections for subpart D of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 475. Mark to market accounting method for dealers in securities."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to all taxable years ending on or after December 31, 1992.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 4-taxable year period beginning with the first taxable year ending on or after December 31, 1992.

(3) UNDERPAYMENT OF ESTIMATED TAX.—In the case of any required installment the due date for which occurs before the date of the enactment of this Act, no addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 with respect to any underpayment to the extent such underpayment was created or increased by any amendment made by, or provision of, this section. All reductions in installments by reason of the preceding sentence shall be recaptured by increasing the amount of the 1st required installment occurring on or after the date of the enactment of this Act by the amount of such reductions.

SEC. 3002. CLARIFICATION OF TREATMENT OF CERTAIN FSLIC FINANCIAL ASSISTANCE.

(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986—

(1) any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of any asset shall be taken into account as compensation for such loss for purposes of section 165 of such Code, and

(2) any FSLIC assistance with respect to any debt shall be taken into account for purposes of section 166, 585, or 593 of such Code in determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts arising from the worthlessness or partial worthlessness of such debts.

(b) FSLIC ASSISTANCE.—For purposes of this section, the term "FSLIC assistance" means any assistance (or right to assistance) with respect to a domestic building and loan association (as defined in section 7701(a)(19) of such Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any similar provision of law).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection—

(A) The provisions of this section shall apply to taxable years ending after March 4, 1991, but only with respect to FSLIC assistance not credited before March 4, 1991.

(B) If any FSLIC assistance not credited before March 4, 1991, is with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991, for purposes of determining the amount of any net operating loss carryover to a taxable year ending after on or after March 4, 1991, the provisions of this section shall apply to such assistance for purposes of determining the amount of the net operating loss for the taxable year in which such loss was sustained or debt written off. Except as provided in the preceding sentence, this section shall not apply to any FSLIC assistance with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991.

(2) EXCEPTIONS.—The provisions of this section shall not apply to any assistance to which the amendments made by section 1401(a)(3) of the Financial Institution Reform, Recovery, and Enforcement Act of 1989 apply.

(3) UNDERPAYMENT OF ESTIMATED TAX.—In the case of any required installment the due date for which occurs before the date of the enactment of this Act, no addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 with respect to any underpayment to the extent such underpayment was created or increased by the treatment of FSLIC assistance credited before such date in a manner other than the manner described in subsection (a). All reductions in installments by reason of the preceding sentence shall be recaptured by increasing the amount of the 1st required installment occurring

on or after the date of the enactment of this Act by the amount of such reductions.

SEC. 3003. SPECIAL RULES FOR RENTAL USE OF DWELLING FOR LESS THAN 15 DAYS PER YEAR.

(a) IN GENERAL.—Section 280A is amended by striking subsection (g) and inserting:

"(g) SPECIAL RULE FOR CERTAIN RENTAL USE.—Notwithstanding any other provision of this section or section 183, if the principal residence of the taxpayer is actually rented for less than 15 days during the taxable year for the purpose of providing accommodations to visitors to an event for which commercial rental accommodations in the community holding the event are not sufficient to reasonably provide more than one-half of the accommodations necessary (and the rental income received by the taxpayer for any visitor is not greater than a reasonable rental rate charged per individual guest by commercial rental accommodations), then—

"(1) no deduction otherwise allowable under this chapter because of the rental use of such dwelling unit shall be allowed, and

"(2) the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under section 61.

"(h) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing such de minimis rules as the Secretary may deem appropriate.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 3004. INCREASE IN RECOVERY PERIOD FOR NONRESIDENTIAL REAL PROPERTY.

(a) GENERAL RULE.—Paragraph (1) of section 168(c) (relating to applicable recovery period) is amended by striking the item relating to nonresidential real property and inserting the following:

"Nonresidential real property .... 40 years.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to property placed in service by the taxpayer on or after July 28, 1992.

(2) EXCEPTION.—The amendments made by this section shall not apply to property placed in service by the taxpayer before January 1, 1995, if—

(A) the taxpayer or a qualified person entered into a binding written contract to purchase or construct such property before July 28, 1992, or

(B) the construction of such property was commenced by or for the taxpayer or a qualified person before July 28, 1992.

For purposes of this paragraph, the term "qualified person" means any person who transfers his rights in such a contract or such property to the taxpayer but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

SEC. 3005. MODIFICATIONS TO DEDUCTIONS FOR CERTAIN MOVING EXPENSES.

(a) REPEAL OF DEDUCTION FOR QUALIFIED RESIDENCE SALE, ETC., EXPENSES.—

(1) IN GENERAL.—Paragraph (1) of section 217(b) (defining moving expenses) is amended by inserting "or" at the end of subparagraph (C), by striking ", or" at the end of subparagraph (D) and inserting a period, and by striking subparagraph (E).

(2) CONFORMING AMENDMENTS.—

(A) Subsection (b) of section 217 is amended by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(B) Section 217 is amended by striking subsection (e).

(b) DEDUCTION DISALLOWED FOR MEAL EXPENSES.—Paragraph (1) of section 217(b) is amended—

(1) by striking "meals and lodging" in subparagraphs (B), (C) and (D) and inserting "lodging", and

(2) by adding at the end thereof the following new sentence: "Such term shall not include any expenses for meals.".

(c) OVERALL LIMITATION.—

(1) IN GENERAL.—Subparagraph (A) of section 217(b)(2) (as redesignated by subsection (a)) is amended to read as follows:

"(A) DOLLAR LIMITS.—The aggregate amount allowable as a deduction under subsection (a) in connection with a commencement of work shall not exceed $10,000. The aggregate amount allowable as a deduction under subsection (a) in connection with a commencement of work which is attributable to expenses described in subparagraphs (C) or (D) of paragraph (1) shall not exceed $1,500."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 217(b)(2) (as so redesignated) is amended by striking the second sentence and inserting the following: "In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting '$750' for '$1,500', and by substituting '$5,000' for '$10,000'."

(B) Paragraph (1) of section 217(h) is amended by striking subparagraphs (B) and (C) and inserting the following:

"(B) subsection (b)(2)(A) shall be applied by substituting '$4,500' for '$1,500', and

"(C) appropriate adjustments to the application of the last sentence of subsection (b)(2)(B) shall be made to take into account the provisions of subparagraph (B) of this paragraph."

(d) INCREASE IN MILEAGE REQUIREMENTS.—Paragraph (1) of section 217(c) is amended by striking "35 miles" each place it appears and inserting "60 miles".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 3006. EXTENSION OF TOP ESTATE AND GIFT TAX RATES.

(a) GENERAL RULE.—

(1) Subparagraph (A) of section 2001(c)(2) (relating to rate schedule) is amended by striking "1993" and inserting "1998".

(2) Subparagraph (D) of section 2001(c)(2) is amended by striking "1993" each place it appears (including in the subparagraph heading) and inserting "1998".

(3) Paragraph (3) of section 2001(c) is amended by striking "1992" and inserting "1997".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply in the case of decedents dying, and gifts made, after December 31, 1992.

SEC. 3007. DENIAL OF DEDUCTION RELATING TO TRAVEL EXPENSES.

(a) IN GENERAL.—Section 274(m) (relating to additional limitations on travel expenses) is amended by adding at the end thereof the following new paragraph:

"(3) TRAVEL EXPENSES OF SPOUSE, DEPENDENT, OR OTHERS.—No deduction shall be allowed under this chapter for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless—

"(A) the spouse, dependent, or other individual is an employee of the taxpayer,

"(B) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and

"(C) such expenses would otherwise be deductible by the spouse, dependent, or other individual."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after December 31, 1992.

SEC. 3008. TREATMENT OF CERTAIN HIGH YIELD DISCOUNT OBLIGATIONS.

(a) IN GENERAL.—Paragraphs (1)(A) and (2)(A) of section 163(i) (relating to applicable high yield discount obligations) are each amended by striking "5 years" and inserting "4 years".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to instruments issued after the date of the enactment of this Act.

SEC. 3009. ELIMINATION OF DEDUCTION FOR CLUB MEMBERSHIP FEES.

(a) IN GENERAL.—Subsection (a) of section 274 (relating to disallowance of certain entertainment, etc., expenses) is amended by adding at the end thereof the following new paragraph:

"(3) DENIAL OF DEDUCTION FOR CLUB DUES.—Notwithstanding the preceding provisions of this subsection, no deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after December 31, 1992.

SEC. 3010. INCREASE IN CASUALTY LOSS DEDUCTIBLE.

(a) IN GENERAL.—Paragraph (1) of section 165(h) (relating to treatment of casualty gains and losses) is amended—

(1) by striking "$100 LIMITATION" in the heading and inserting "LIMITATION", and

(2) by striking "$100" in the text and inserting "$500".

(b) LOSS DEDUCTIBLE INDEXED FOR INFLATION.—Subsection (h) of section 165 is amended by adding at the end thereof the following new paragraph:

"(5) INFLATION ADJUSTMENT OF PER CASUALTY LIMITATION.—In the case of any taxable year beginning after 1993, the dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which such taxable year begins, by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $10, such increase shall be rounded to the nearest multiple of $10."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 3011. ADDITIONAL SUBSTANTIATION REQUIREMENTS FOR CERTAIN MEALS AND ENTERTAINMENT EXPENSES.

(a) GENERAL RULE.—Subsection (d) of section 274 (relating to substantiation requirements) is amended by adding at the end thereof the following new sentence: "In the case of an expense for any meal referred to in paragraph (1) or an item referred to in paragraph (2), the taxpayer shall not be treated as meeting the substantiation requirements of this subsection with respect to the amount of such expense or item unless such amount is shown on a receipt which is prepared by the provider of the meal, entertainment, amusement, or recreation (as the case may be) and which is provided at the time of (or within a reasonable period of time after) the furnishing of the meal, entertainment, amusement, or recreation (as the case may be)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses paid or incurred after December 31, 1992.

SEC. 3012. PASSIVE ACTIVITY LOSSES AND CREDITS REDUCED UNDER SECTION 108.

(a) IN GENERAL.—Section 108(b)(2) is amended by adding after subparagraph (E) the following new subparagraph:

"(F) PASSIVE ACTIVITY LOSS AND CREDIT CARRYOVERS.—Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge."

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 108(b)(3) is amended by adding at the end the following new sentence: "The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33 ⅓ cents for each dollar excluded by subsection (a)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 3013. REPEAL OF STOCK FOR DEBT EXCEPTION IN DETERMINING INCOME FROM DISCHARGE OF INDEBTEDNESS.

(a) IN GENERAL.—Subsection (e) of section 108 of the Internal Revenue Code of 1986 is amended—

(1) by striking paragraph (10) and redesignating paragraph (11) as paragraph (10), and

(2) by amending paragraph (8) to read as follows.

"(8) INDEBTEDNESS SATISFIED BY CORPORATION'S STOCK.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock."

(b) CONFORMING AMENDMENT.—Paragraph (5) of section 382(l) is amended by striking subparagraph (C) and by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to stock transferred after July 9, 1992, in satisfaction of any indebtedness.

(2) EXCEPTION.—The amendments made by this section shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before July 9, 1992.

(3) EXCEPTION.—The amendments made by this section shall not apply to any stock transferred in satisfaction of any indebtedness if such transfer occurs on or before December 31, 1993, and—

(A) the taxpayer had filed with the Securities and Exchange Commission on or before July 9, 1992, a registration statement which proposed a stock-for-debt exchange with respect to such indebtedness, and which discussed the possible application of the stock-for-debt exception to such exchange, or

(B) the transfer is pursuant to a binding contract in effect on July 9, 1992.

Subtitle B—Estimated Tax Provisions

SEC. 3101. INDIVIDUAL ESTIMATED TAX PROVISIONS.

(a) GENERAL RULE.—Paragraph (1) of section 6654(d) (relating to amount of required installment) is amended—

(1) by striking "100 percent" in subparagraph (B)(ii) and inserting "120 percent", and

(2) by striking subparagraphs (C), (D), (E), and (F).

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 6654(i)(1) is amended by striking "and without regard to subparagraph (C) of subsection (d)(1)".

(2) Subparagraph (A) of section 6654(j)(3) is amended by striking "and subsection (d)(1)(C)(iii) shall not apply".

(3) Paragraph (4) of section 6654(l) is amended by striking "paragraphs (1)(C)(iv) and (2)(B)(i) of subsection (d)" and inserting "subsection (d)(2)(B)(i)".

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1992.

SEC. 3102. CORPORATE ESTIMATED TAX PROVISIONS.

(a) INCREASE IN ESTIMATED TAX.—

(1) IN GENERAL.—Subsection (d) of section 6655 (relating to amount of required installments) is amended—

(A) by striking "91 percent" each place it appears in paragraph (1)(B)(i) and inserting "100 percent",

(B) by striking "91 PERCENT" in the heading of paragraph (2) and inserting "100 PERCENT", and

(C) by striking paragraph (3).

(2) CONFORMING AMENDMENTS.—

(A) Clause (ii) of section 6655(e)(2)(B) is amended by striking the table contained therein and inserting the following new table:

"In the case of the following required installments:	*The applicable percentage is:*
1st	*25*
2nd	*50*
3rd	*75*
4th	*100."*

(B) Clause (i) of section 6655(e)(3)(A) is amended by striking "91 percent" and inserting "100 percent".

(b) MODIFICATION OF PERIODS FOR APPLYING ANNUALIZATION.—

(1) Clause (i) of section 6655(e)(2)(A) is amended—

(A) by striking "or for the first 5 months" in subclause (II),

(B) by striking "or for the first 8 months" in subclause (III), and

(C) by striking "or for the first 11 months" in subclause (IV).

(2) Paragraph (2) of section 6655(e) is amended by adding at the end thereof the following new subparagraph:

"(C) ELECTION FOR DIFFERENT ANNUALIZATION PERIODS.—

"(i) If the taxpayer makes an election under this clause—

"(I) subclause (II) of subparagraph (A)(i) shall be applied by substituting '4 months' for '3 months',

"(II) subclause (III) of subparagraph (A)(i) shall be applied by substituting '7 months' for '6 months', and

"(III) subclause (IV) of subparagraph (A)(i) shall be applied by substituting '10 months' for '9 months'.

"(ii) If the taxpayer makes an election under this clause—

"(I) subclause (II) of subparagraph (A)(i) shall be applied by substituting '5 months' for '3 months',

"(II) subclause (III) of subparagraph (A)(i) shall be applied by substituting '8 months' for '6 months', and

"(III) subclause (IV) of subparagraph (A)(i) shall be applied by substituting '11 months' for '9 months'.

"(iii) An election under clause (i) or (ii) shall apply to the taxable year for which made and such an election shall be effective only if made on or before the date required for the payment of the second required installment for such taxable year."

(3) The last sentence of section 6655(f)(3)(A) is amended by striking "and subsection (e)(2)(A)" and inserting "and, except in the case of an election under subsection (e)(2)(C), subsection (e)(2)(A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

Subtitle C—Administrative Provisions

SEC. 3201. DISALLOWANCE OF INTEREST ON CERTAIN OVERPAYMENTS OF TAX.

(a) GENERAL RULE.—Subsection (e) of section 6611 is amended to read as follows:

"(e) DISALLOWANCE OF INTEREST ON CERTAIN OVERPAYMENTS.—

"(1) REFUNDS WITHIN 45 DAYS AFTER RETURN IS FILED.—If any overpayment of tax imposed by this title is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

"(2) REFUNDS AFTER CLAIM FOR CREDIT OR REFUND.—If—

"(A) the taxpayer files a claim for a credit or refund for any overpayment of tax imposed by this title, and

"(B) such overpayment is refunded within 45 days after such claim is filed,

no interest shall be allowed on such overpayment from the date the claim is filed until the day the refund is made.

"(3) IRS INITIATED ADJUSTMENTS.—Notwithstanding any other provision, if an adjustment, initiated by or on behalf of the Secretary, results in a refund or credit of an overpayment, interest on such overpayment shall be computed by subtracting 45 days from the number of days interest would otherwise be allowed with respect to such overpayment."

(b) EFFECTIVE DATES.—

(1) Paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply in the case of returns the due date for which (determined without regard to extensions) is on or after January 1, 1993.

(2) Paragraph (2) of section 6611(e) of such Code (as so amended) shall apply in the case of claims for credit or refund of any overpayment filed on or after January 1, 1994, regardless of the taxable period to which such refund relates.

(3) Paragraph (3) of section 6611(e) of such Code (as so amended) shall apply in the case of any refund paid on or after January 1, 1994, regardless of the taxable period to which such refund relates.

SEC. 3202. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS.

If an employer elects under Treasury Regulation 31.3402(g) -1 to determine the amount to be deducted and withheld from any supplemental wage payment by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 28 percent. The preceding sentence shall apply to payments made after December 31, 1992.

Subtitle D—Alternative Taxable Years

SEC. 3301. ELECTION OF TAXABLE YEAR OTHER THAN REQUIRED TAXABLE YEAR.

(a) LIMITATIONS ON TAXABLE YEARS WHICH MAY BE ELECTED.—Subsection (b) of section 444 (relating to limitations on taxable years which may be elected) is amended to read as follows:

"(b) TAXABLE YEAR MUST BE SAME AS REPORTING PERIOD.—If an entity has annual reports or statements—

"(1) which ascertain income, profit, or loss of the entity, and

"(2) which are—

"(A) provided to shareholders, partners, or other proprietors, or

"(B) used for credit purposes,

the entity may make an election under subsection (a) only if the taxable year elected covers the same period as such reports or statements."

(b) PERIOD OF ELECTION.—Section 444(d)(2) (relating to period of election) is amended to read as follows:

"(2) PERIOD OF ELECTION.—

"(A) IN GENERAL.—An election under subsection (a) shall remain in effect until the partnership, S corporation, or personal service corporation terminates the election and adopts the required taxable year.

"(B) CHANGE NOT TREATED AS TERMINATION.—For purposes of subparagraph (A), a change from a taxable year which is not a required taxable year to another such taxable year shall not be treated as a termination "

(c) EXCEPTION FOR TRUSTS.—Section 444(d)(3) (relating to tiered structures) is amended by adding at the end thereof the following new subparagraph:

"(C) EXCEPTION FOR CERTAIN STRUCTURES THAT INCLUDE TRUSTS.—An entity shall not be considered to be part of a tiered structure to which subparagraph (A) applies solely because a trust owning an interest in such entity is a trust all of the beneficiaries of which use a calendar year for their taxable year."

(d) REGULATIONS.—Subsection (g) of section 444 (relating to regulations) is amended to read as follows:

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations—

"(1) to prevent the avoidance of the provisions of this section through a change in entity or form of an entity,

"(2) to prevent the carryback to any preceding taxable year of a net operating loss (or similar item) arising in any short taxable year created pursuant to an election or termination of an election under this section, and

"(3) to provide for the termination of an election under subsection (a) if an entity does not continue to meet the requirements of subsection (b)."

SEC. 3302. REQUIRED PAYMENTS FOR ENTITIES ELECTING NOT TO HAVE REQUIRED TAXABLE YEAR.

(a) ADDITIONAL REQUIRED PAYMENT.—

(1) IN GENERAL.—Section 7519(b) (defining required payment) is amended to read as follows:

"(b) REQUIRED PAYMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'required payment' means, with respect to any applicable election year of a partnership or S corporation, an amount equal to the excess (if any) of—

"(A) the adjusted highest section 1 rate, multiplied by the net base year income of the entity, over

"(B) the net required payment balance.

For purposes of paragraph (1)(A), the term 'adjusted highest section 1 rate' means the highest rate of tax in effect under section 1 as of the close of the first required taxable year ending within such year, plus 2 percentage points.

"(2) ADDITIONAL PAYMENT FOR NEW APPLICABLE ELECTION YEARS.—

"(A) IN GENERAL.—In the case of a new applicable election year, the required payment shall include, in addition to any amount determined under paragraph (1), the amount determined under subparagraph (C).

"(B) NEW APPLICABLE ELECTION YEAR.—For purposes of this section, the term 'new applicable election year' means any applicable election year—

"(i) with respect to which the preceding taxable year was not an applicable election year, or

"(ii) which covers a different period than the preceding taxable year by reason of a change described in section 444(d)(2)(B).

If any year described in the preceding sentence is a short taxable year which does not include the last day of the required taxable year, the new applicable election year shall be the taxable year following the short taxable year.

"(C) ADDITIONAL AMOUNT.—For purposes of subparagraph (A), the amount determined under this subparagraph shall be—

"(i) in the case of a year described in subparagraph (B)(i), 75 percent of the required payment for the year, and

"(ii) in the case of a year described in subparagraph (B)(ii), 75 percent of the excess (if any) of—

"(I) the required payment for the year, over

"(II) the required payment for the year which would have been computed if the change described in subparagraph (B)(ii) had not occurred.

"(D) REQUIRED PAYMENT.—For purposes of this paragraph, the term 'required payment' means the payment required by this section (determined without regard to this paragraph)."

(2) DUE DATE.—Paragraph (2) of section 7519(f) (defining due date) is amended to read as follows:

"(2) DUE DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any required payment for any applicable election year shall be paid on or before May 15 of the calendar year following the calendar year in which the applicable election year begins.

"(B) SPECIAL RULE WHERE NEW APPLICABLE ELECTION YEAR ADOPTED.—In the case of a new applicable election year, the portion of any required payment determined under subsection (b)(2) shall be paid on or before September 15 of the calendar year in which the applicable election year begins."

(3) PENALTIES.—

(A) IN GENERAL.—Section 7519(f)(4) (relating to penalties) is amended by adding at the end thereof the following new subparagraph:

"(D) FAILURE TO PAY ADDITIONAL AMOUNT.—In the case of any failure by any entity to pay on the date prescribed therefore the portion of any required payment described in subsection (b)(2) for any applicable election year—

"(i) subparagraph (A) shall not apply, but

"(ii) the entity shall, for purposes of this title, be treated as having terminated the election under section 444 for such year and changed to the required taxable year."

(B) CONFORMING AMENDMENT.—Section 7519(f)(4)(A) is amended by striking "In" and inserting "Except as provided in subparagraph (D), in".

(4) REFUNDS.—Section 7519(c)(2)(A) (relating to refund of payments) is amended to read as follows:

"(A) an election under section 444 is not in effect for any year but was in effect for the preceding year, or".

(5) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 7519(c) is amended—

(i) by striking "subsection (b)(2)" and inserting "subsection (b)(1)(B)", and

(ii) by striking "subsection (b)(1)" and inserting "subsection (b)(1)(A)".

(B) Subsection (d) of section 7519 is amended by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) OTHER DEFINITIONS AND SPECIAL RULES.—

(1) REFUND.—Paragraph (3) of section 7519(c) (relating to date on which refund is payable) is amended in the matter pre-

ceding subparagraph (A) by striking "on the later of" and inserting "by the later of".

(2) DEFERRAL RATIO.—The last sentence of paragraph (1) of section 7519(d) is amended to read as follows: "Except as provided in regulations, the term 'deferral ratio' means the ratio which the number of months in the deferral period of the applicable election year bears to the number of months in the applicable election year."

(3) NET INCOME.—Paragraph (2) of section 7519(d) is amended by adding at the end the following new subparagraph:

"(D) EXCESS APPLICABLE PAYMENTS FOR BASE YEAR.—In the case of any new applicable election year, the net income for the base year shall be increased by the excess (if any) of—

"(i) the applicable payments taken into account in determining net income for the base year, over

"(ii) 120 percent of the average amount of applicable payments made during the first 3 taxable years preceding the base year."

(4) DEFERRAL PERIOD.—Paragraph (1) of section 7519(e) (defining deferral period) is amended to read as follows:

"(1) DEFERRAL PERIOD.—Except as provided in regulations, the term 'deferral period' means, with respect to any taxable year of the entity, the months between—

"(A) the beginning of such year, and

"(B) the close of the first required taxable year (as defined in section 444(e)) ending within such year."

(5) BASE YEAR.—

(A) IN GENERAL.—Paragraph (2)(A) of section 7519(e) (defining base year) is amended to read as follows:

"(A) BASE YEAR.—The term 'base year' means, with respect to any applicable election year, the first taxable year of 12 months (or 52 0953 weeks) of the partnership or S corporation preceding such applicable election year."

(B) CONFORMING AMENDMENT.—Paragraph (2) of subsection (g) of section 7519 is amended to read as follows:

"(2) there is no base year described in subsection (e)(2)(A) or no preceding taxable year described in section 280H(c)(1)(A)(i)."

(c) INTEREST.—Section 7519(f)(3) (relating to interest) is amended to read as follows:

"(3) INTEREST.—For purposes of determining interest, any payment required by this section shall be treated as a tax, except that interest shall be allowed with respect to any refund of a payment under this section only for the period from the latest date specified in subsection (c)(3) for such refund to the actual date of payment of such refund."

SEC. 3303. LIMITATION ON CERTAIN AMOUNTS PAID TO EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATIONS.

(a) CARRYOVER OF NONDEDUCTIBLE AMOUNTS.—Subsection (b) of section 280H (relating to carryover of nondeductible amounts) is amended to read as follows:

"(b) CARRYOVER OF NONDEDUCTIBLE AMOUNTS.—Any amount not allowed as a deduction for a taxable year pursuant to subsection (a) shall be allowed as a deduction in the succeeding taxable year."

(b) MINIMUM DISTRIBUTION REQUIREMENT.—Paragraph (1) of section 280H(c) is amended to read as follows:

"(1) IN GENERAL.—A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid during the deferral period of the taxable year equal or exceed the lesser of—

"(A) 110 percent of the product of—

"(i) the applicable amounts paid during the first preceding taxable year of 12 months (or 52 0953 weeks), divided by 12, and

"(ii) the number of months in the deferral period of the taxable year, or

"(B) 110 percent of the amount equal to the applicable percentage of the adjusted taxable income for the deferral period of the taxable year."

(c) DISALLOWANCE OF NOL CARRYBACKS.—Subsection (e) of section 280H (relating to disallowance of net operating loss carrybacks) is amended by striking "to (or from)" and inserting "from".

(d) CONFORMING AMENDMENT.—Subparagraph (A) of section 280H(f)(3) (relating to deferral period) is amended by striking "section 444(b)(4)" and inserting "section 7519(e)(1)".

SEC. 3304. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to taxable years beginning after December 31, 1992.

TITLE IV—SIMPLIFICATION PROVISIONS

Subtitle A—Provisions Relating to Individuals

PART I—PROVISIONS RELATING TO EARNED INCOME CREDIT

SEC. 4101. REPEAL OF CERTAIN INTERACTION RULES.

(a) REPEAL OF INTERACTION WITH MEDICAL EXPENSE DEDUCTION.—Section 213 (relating to medical, dental, etc., expenses) is amended by striking subsection (f).

(b) REPEAL OF INTERACTION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED.—Paragraph (3) of section 162(l) (relating to special rules for health insurance costs of self-employed individuals) is amended to read as follows:

"(3) COORDINATION WITH MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a)."

(c) REPEAL OF INTERACTION WITH DEPENDENT CARE CREDIT.—Subparagraph (D) of section 32(b)(1) (relating to supplemental young child credit) is amended by striking the second sentence.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 4102. MILITARY PERSONNEL STATIONED OUTSIDE THE UNITED STATES NO LONGER EXCLUDED FROM EARNED INCOME CREDIT, ETC.

(a) IN GENERAL.—Subparagraph (E) of section 32(c)(3) (defining qualified child) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply during any period during which the taxpayer is stationed outside the United States while serving on extended active duty (as defined in section 1034(h)(3)) with the Armed Forces of the United States."

(b) REPORTING OF MILITARY EARNED INCOME.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking "and" at the end of paragraph (8), by striking the period at the end of paragraph (9) and by inserting ", and", and by inserting after paragraph (9) the following new paragraph:

"(10) in the case of an employee who is a member of the Armed Forces of the United States, such employee's earned income as determined for purposes of section 32 (relating to earned income credit)."

(c) ADVANCE PAYMENT OF EARNED INCOME CREDIT BASED ON MILITARY EARNED INCOME.—Paragraph (1) of section 3507(c) (defining earned income advance amount) is amended by adding at the end thereof the following new sentence:

"In the case of an employee who is a member of the Armed Forces of the United States, the earned income advance amount shall be determined by taking into account such employee's earned income as determined for purposes of section 32."

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

(2) SUBSECTIONS (b) AND (c).—The amendments made by subsections (b) and (c) shall apply to remuneration paid after December 31, 1992.

PART II—PROVISIONS RELATING TO ROLLOVER OF GAIN ON SALE OF PRINCIPAL RESIDENCE

SEC. 4111. MULTIPLE SALES WITHIN ROLLOVER PERIOD.

(a) GENERAL RULE.—

(1) Section 1034 (relating to rollover of gain on sale of principal residence) is amended by striking subsection (d).

(2) Paragraph (4) of section 1034(c) is amended to read as follows:

"(4) If the taxpayer, during the period described in subsection (a), purchases more than 1 residence which is used by him as his principal residence at some time within 2 years after the date of the sale of the old residence, only the first of such residences so used by him after the date of such sale shall constitute the new residence."

(3) Subsections (h)(1) and (k) of section 1034 are each amended by striking "(other than the 2 years referred to in subsection (c)(4))".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

SEC. 4112. SPECIAL RULES IN CASE OF DIVORCE.

(a) IN GENERAL.—Subsection (c) of section 1034 is amended by adding at the end thereof the following new paragraph:

"(5) If—

"(A) a residence is sold by an individual pursuant to a divorce or marital separation, and

"(B) the taxpayer used such residence as his principal residence at any time during the 2-year period ending on the date of such sale,

for purposes of this section, such residence shall be treated as the taxpayer's principal residence at the time of such sale."

(b) EFFECTIVE DATES.—The amendment made by subsection (a) shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

SEC. 4113. EXTENSION OF ROLLOVER PERIOD WHERE TAXPAYER HAS SUBSTANTIAL FROZEN DEPOSITS.

(a) GENERAL RULE.—Section 1034 (relating to rollover of gain on sale of principal residence) is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) EXTENSION WHERE TAXPAYER HAS SUBSTANTIAL FROZEN DEPOSITS.—

"(1) IN GENERAL.—The running of any period of time specified in subsection (a) or (c) (other than the 2 years referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer has substantial frozen deposits after the date of the sale of the old residence; except that any such period of time as so suspended shall not extend beyond the date 4 years after the date of the sale of the old residence.

"(2) SUBSTANTIAL FROZEN DEPOSITS.—For purposes of this subsection—

"(A) IN GENERAL.—A taxpayer shall be treated as having substantial frozen deposits for any period during which the aggregate frozen deposits of the taxpayer exceed 50 percent of the net amount realized from the sale of the old residence.

"(B) FROZEN DEPOSIT.—The term 'frozen deposit' means deposit in a financial institution if such deposit may not be withdrawn (during a period of at least 5 days) because of—

"(i) the bankruptcy or insolvency of a financial institution, or

"(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

"(C) NET AMOUNT REALIZED.—The net amount realized from the sale of the old residence is the amount realized from the sale of the old residence reduced—

"(i) as provided in subsection (b)(1), and

"(ii) by the amount of any indebtedness of the taxpayer which was secured by the old residence.

"(3) TREATMENT OF MARRIED INDIVIDUALS.—If the old residence and the new residence are each used by the taxpayer and the spouse of the taxpayer as their principal residence, such individuals shall be treated as one taxpayer for purposes of this subsection."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to—

(1) any residence sold or exchanged after December 31, 1990, and

(2) any residence sold or exchanged on or before such date if the period specified in section 1034(a) of the Internal Revenue Code of 1986 (without regard to the amendment made by subsection (a)) has not expired before January 1, 1991.

PART III—OTHER PROVISIONS

SEC. 4121. DE MINIMIS EXCEPTION TO PASSIVE LOSS RULES.

(a) GENERAL RULE.—Section 469 (relating to passive activity losses and credits limited) is amended—

(1) by striking subsection (m),

(2) by redesignating subsection (l) as subsection (m), and

(3) by inserting after subsection (k) the following new subsection:

"(l) DE MINIMIS EXCEPTION.—

"(1) IN GENERAL.—In the case of a natural person, subsection (a) shall not apply to the passive activity loss for any taxable year if the amount of such loss does not exceed $200.

"(2) EXCEPTION FOR ITEMS ATTRIBUTABLE TO PUBLICLY TRADED PARTNERSHIPS.—This subsection shall not apply to items treated separately under subsection (k) (and such items shall not be taken into account in determining whether paragraph (1) applies to the taxpayer for the taxable year with respect to other items).

"(3) ESTATES ELIGIBLE.—For purposes of this subsection, an estate shall be treated as a natural person with respect to any taxable year ending less than 2 years after the death of the decedent.

"(4) MARRIED INDIVIDUALS FILING SEPARATELY.—

"(A) IN GENERAL.—This subsection shall not apply to a taxpayer who—

"(i) is a married individual filing a separate return for the taxable year, and

"(ii) does not live apart from his souse at all times during such taxable year.

"(B) LIMITATION.—Paragraph (1) shall be applied by substituting '$100' for '$200' in the case of a married individual who files a separate return for the taxable year and

to whom this subsection applies after the application of subparagraph (A).''

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 56(b)(1) is amended by striking clause (ii) and redesignating the following clauses accordingly.

(2) Subsection (b) of section 58 is amended by inserting "and" at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(3) Paragraph (4) of section 163(d) is amended by striking subparagraph (E).

(4) Subsection (d) of section 163 is amended by striking paragraph (6).

(5) Subsection (h) of section 163 is amended by striking paragraph (5).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4122. PAYMENT OF TAX BY CREDIT CARD.

(a) GENERAL RULE.—Section 6311 is amended to read as follows:

"SEC. 6311. PAYMENT BY CHECK, MONEY ORDER, OR OTHER MEANS.

"(a) AUTHORITY TO RECEIVE.—It shall be lawful for the Secretary to receive for internal revenue taxes (or in payment for internal revenue stamps) checks, money orders, or any other commercially acceptable means that the Secretary deems appropriate, including payment by use of credit cards or debit cards, to the extent and under the conditions provided in regulations prescribed by the Secretary.

"(b) ULTIMATE LIABILITY.—If a check, money order, or other method of payment, including payment by credit card or debit card, so received is not duly paid, or is paid and subsequently charged back to the Secretary, the person by whom such check, or money order, or other method of payment has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check, money order, or other method of payment had not been tendered.

"(c) LIABILITY OF BANKS AND OTHERS.—If any certified, treasurer's, or cashier's check (or other guaranteed draft), or any money order, or any other means of payment that has been guaranteed by a financial institution (such as a credit card or debit card transaction which has been guaranteed expressly by a financial institution) so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for—

"(1) the amount of such check (or draft) upon all assets of the financial institution on which drawn,

"(2) the amount of such money order upon all the assets of the issuer thereof, or

"(3) the guaranteed amount of any other transaction upon all the assets of the institution making such guarantee,

and such amount shall be paid out of such assets in preference to any other claims whatsoever against such financial institution, issuer, or guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United

States for the amount expended in the redemption of the circulating notes of such financial institution.

"(d) PAYMENT BY OTHER MEANS.—

"(1) AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary shall prescribe such regulations as the Secretary deems necessary to receive payment by commercially acceptable means, including regulations that—

"(A) specify which methods of payment by commercially acceptable means will be acceptable,

"(B) specify when payment by such means will be considered received,

"(C) identify types of nontax matters related to payment by such means that are to be resolved by persons ultimately liable for payment and financial intermediaries, without the involvement of the Secretary, and

"(D) ensure that tax matters will be resolved by the Secretary, without the involvement of financial intermediaries.

"(2) AUTHORITY TO ENTER INTO CONTRACTS.—Notwithstanding section 3718(f) of title 31, United States Code, the Secretary is authorized to enter into contracts to obtain services related to receiving payment by other means where cost beneficial to the government and is further authorized to pay any fees required by such contracts.

"(3) SPECIAL PROVISIONS FOR USE OF CREDIT CARDS.—If use of credit cards is accepted as a method of payment of taxes pursuant to subsection (a)—

"(A) a payment of internal revenue taxes (or a payment for internal revenue stamps) by a person by use of a credit card shall not be subject to section 161 of the Truth-in-Lending Act (15 U.S.C. 1666), or to any similar provisions of State law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the credit card account such as a computational error or numerical transposition in the credit card transaction or an issue as to whether the person authorized payment by use of the credit card,

"(B) a payment of internal revenue taxes (or a payment for internal revenue stamps) shall not be subject to section 170 of the Truth-in-Lending Act (15 U.S.C. 1666i), or to any similar provisions of State law,

"(C) a payment of internal revenue taxes (or a payment for internal revenue stamps) by a person by use of a debit card shall not be subject to section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or to any similar provisions of State law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the debit card account such as a computational error or numerical transposition in the debit card transaction or an issue as to whether the person authorized payment by use of the debit card,

"(D) the term 'creditor' under section 103(f) of the Truth-in-Lending Act (15 U.S.C. 1602(f)) shall not include the Secretary with respect to credit card transactions in

payment of internal revenue taxes (or payment for internal revenue stamps), and

"(E) notwithstanding any other provision of law to the contrary, in the case of payment made by credit card or debit card transaction of an amount owed to a person as the result of the correction of an error under section 161 of the Truth-in-Lending Act (15 U.S.C. 1666) or section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), the Secretary is authorized to provide such amount to such person as a credit to that person's credit card or debit card account through the applicable credit card or debit card system.

"(e) CONFIDENTIALITY OF INFORMATION.—

"(1) IN GENERAL.—Except as otherwise authorized by this subsection, no person may use or disclose any information relating to credit or debit card transactions obtained pursuant to section 6103(k)(8) other than for purposes directly related to the processing of such transactions, or the billing or collection of amounts charged or debited pursuant thereto.

"(2) EXCEPTIONS.—

"(A) Debit or credit card issuers or others acting on behalf of such issuers may also use and disclose such information for purposes directly related to servicing an issuer's accounts.

"(B) Debit or credit card issuers or others directly involved in the processing of credit or debit card transactions or the billing or collection of amounts charged or debited thereto may also use and disclose such information for purposes directly related to—

"(i) statistical risk and profitability assessment;

"(ii) transferring receivables, accounts, or interest therein;

"(iii) auditing the account information;

"(iv) complying with Federal, State, or local law; and

"(v) properly authorized civil, criminal, or regulatory investigation by Federal, State, or local authorities.

"(3) PROCEDURES.—Use and disclosure of information under this paragraph shall be made only to the extent authorized by written procedures promulgated by the Secretary.

"(4) CROSS REFERENCE.—

"For provision providing for civil damages for violation of paragraph (1), see section 7431."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 64 is amended by striking the item relating to section 6311 and inserting the following:

"Sec. 6311. Payment by check, money order, or other means."

(c) AMENDMENTS TO SECTIONS 6103 AND 7431 WITH RESPECT TO DISCLOSURE AUTHORIZATION.—

(1) Subsection (k) of section 6103 and (relating to confidentiality and disclosure of returns and return information) is

amended by adding at the end thereof the following new paragraph:

"(8) DISCLOSURE OF INFORMATION TO ADMINISTER SECTION 6311.—The Secretary may disclose returns or return information to financial institutions and others to the extent the Secretary deems necessary for the administration of section 6311. Disclosures of information for purposes other than to accept payments by checks or money orders shall be made only to the extent authorized by written procedures promulgated by the Secretary."

(2) Section 7431 (relating to civil damages for unauthorized disclosure of returns and return information) is amended by adding at the end thereof the following new subsection:

"(g) SPECIAL RULE FOR INFORMATION OBTAINED UNDER SECTION 6103(k)(8).—For purposes of this section, any reference to section 6103 shall be treated as including a reference to section 6311(e)."

(3) Section 6103(p)(3)(A) is amended by striking "or (6)" and inserting in lieu thereof "(6), or (8),".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the day 9 months after the date of the enactment of this Act.

SEC. 4123. MODIFICATIONS TO ELECTION TO INCLUDE CHILD'S INCOME ON PARENT'S RETURN.

(a) ELIGIBILITY FOR ELECTION.—Clause (ii) of section 1(g)(7)(A) (relating to election to include certain unearned income of child on parent's return) is amended to read as follows:

"(i) such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,".

(b) COMPUTATION OF TAX.—Subparagraph (B) of section 1(g)(7) (relating to income included on parent's return) is amended—

(1) by striking "$1,000" in clause (i) and inserting "twice the amount described in paragraph (4)(A)(ii)(I)", and

(2) by amending subclause (II) of clause (ii) to read as follows:

"(II) for each such child, 15 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and".

(c) MINIMUM TAX.—Subparagraph (B) of section 59(j)(1) is amended by striking "$1,000" and inserting "twice the amount in effect for the taxable year under section 63(c)(5)(A)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4124. SIMPLIFIED FOREIGN TAX CREDIT LIMITATION FOR INDIVIDUALS.

(a) GENERAL RULE.—Section 904 (relating to limitations on foreign tax credit) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SIMPLIFIED LIMITATION FOR CERTAIN INDIVIDUALS.—

"(1) IN GENERAL.—In the case of an individual to whom this subsection applies for any taxable year, the limitation of subsection (a) shall be the lesser of—

"(A) 25 percent of such individual's gross income for the taxable year from sources without the United States, or

"(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year (determined without regard to subsection (c)).

No taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued in any other taxable year under subsection (c).

"(2) INDIVIDUALS TO WHOM SUBSECTION APPLIES.—This subsection shall apply to an individual for any taxable year if—

"(A) the entire amount of such individual's gross income for the taxable year from sources without the United States consists of qualified passive income,

"(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year does not exceed $200 ($400 in the case of a joint return), and

"(C) such individual elects to have this subsection apply for the taxable year.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED PASSIVE INCOME.—The term 'qualified passive income' means any item of gross income if—

"(i) such item of income is passive income (as defined in subsection (d)(2)(A) without regard to clause (iii) thereof), and

"(ii) such item of income is shown on a payee statement furnished to the individual.

"(B) CREDITABLE FOREIGN TAXES.—The term 'creditable foreign taxes' means any taxes for which a credit is allowable under section 901; except that such term shall not include any tax unless such tax is shown on a payee statement furnished to such individual.

"(C) PAYEE STATEMENT.—The term 'payee statement' has the meaning given to such term by section 6724(d)(2).

"(D) ESTATES AND TRUSTS NOT ELIGIBLE.—This subsection shall not apply to any estate or trust."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

SEC. 4125. TREATMENT OF PERSONAL TRANSACTIONS BY INDIVIDUALS UNDER FOREIGN CURRENCY RULES.

(a) GENERAL RULE.—Subsection (e) of section 988 (relating to application to individuals) is amended to read as follows:

"(e) APPLICATION TO INDIVIDUALS.—

"(1) IN GENERAL.—The preceding provisions of this section shall not apply to any section 988 transaction entered into by an individual which is a personal transaction.

"(2) EXCLUSION FOR CERTAIN PERSONAL TRANSACTIONS.—If—

"(A) nonfunctional currency is disposed of by an individual in any transaction, and

"(B) such transaction is a personal transaction,

no gain shall be recognized for purposes of this subtitle by reason of changes in exchange rates after such currency was acquired by such individual and before such disposition. The pre-

ceding sentence shall not apply if the gain which would otherwise be recognized exceeds $200.

"(3) PERSONAL TRANSACTIONS.—For purposes of this subsection, the term 'personal transaction' means any transaction entered into by an individual, except that such term shall not include any transaction to the extent that expenses properly allocable to such transaction meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4126. TAX TREATMENT OF CERTAIN COMBAT PAY.

(a) MONTHLY EXCLUSION OF COMMISSIONED OFFICERS.—

(1) IN GENERAL.—Section 112(b) is amended by striking "$500" and inserting "the applicable amount".

(2) APPLICABLE AMOUNT.—Section 112(c) is amended by adding at the end the following new paragraph:

"(5) APPLICABLE AMOUNT.—

"(A) IN GENERAL.—The term 'applicable amount' means $2,000.

"(B) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 1994, the $2,000 amount under subparagraph (A) shall be increased by an amount equal to—

"(i) $2,000, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that section 1(f)(3)(B) shall be applied for purposes of this clause by substituting 'calendar year 1993' for 'calendar year 1989'."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to service in a combat zone after December 31, 1993.

(b) EXTENSION OF SPECIAL TAX TREATMENT FOR PRISONERS OF WAR AND MISSING IN ACTION OF PERSIAN GULF CONFLICT.—

(1) IN GENERAL.—Paragraph (1) of section 112(d), as amended by subsection (c)(2)(B), is amended by inserting "or the Persian Gulf conflict" after "Vietnam conflict".

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 112(d) is amended by adding at the end the following new sentence: "For purposes of this subsection, an individual is in missing status as a result of the Persian Gulf conflict if, immediately before such status began, the individual was performing service in the combat zone designated by Executive Order 12744 during the period of combatant activities, or the individual was performing service in Southwest Asia and was entitled to special pay for hostile fire or imminent danger under section 310 of title 37, of the United States Code by reason of being in direct support of military operations in such combat zone during such period."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on January 1, 1991.

(c) CLASSIFICATION OF VIETNAM SERVICE.—

(1) IN GENERAL.—Section 112(c)(3) is amended by inserting ", and May 7, 1975 shall be considered the date of termination of combatant activities in the combat zone designated in Executive Order 11216" after "Executive Order 10195".

(2) CONFORMING AMENDMENTS.—

(A) The first sentence of section 112(d)(3) is amended by striking ", and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam".

(B) Paragraphs (1) and (2) of section 112(d) are each amended by striking "during the Vietnam conflict as a result of such conflict" and inserting "as a result of the Vietnam conflict".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act, except that in the case of the Persian Gulf conflict, the amendment made by paragraph (2)(B) shall apply on and after January 1, 1991.

(d) EXCLUSION OF COMBAT PAY FROM WITHHOLDING LIMITED TO AMOUNT EXCLUDABLE FROM GROSS INCOME.—

(1) IN GENERAL.—Paragraph (1) of section 3401(a) (defining wages) is amended by inserting before the semicolon the following: "to the extent remuneration for such service is excludable from gross income under such section".

(2) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to remuneration paid after December 31, 1992.

SEC. 4127. EXPANDED ACCESS TO SIMPLIFIED INCOME TAX RETURNS.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate shall take such actions as may be appropriate to expand access to simplified individual income tax returns and to otherwise simplify the individual income tax returns, including—

(1) (if appropriate) allowing taxpayers who itemize deductions to file their return on Form 1040A, and

(2) removing or raising the taxable income limitations on taxpayers who may file Form 1040A.

(b) REPORT.—Not later than the date 1 year after the date of the enactment of this Act, the Secretary of the Treasury or his delegate shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a report on his actions under subsection (a), together with such recommendations as he may deem advisable.

SEC. 4128. TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.

(a) IN GENERAL.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.—

"(1) GENERAL RULE.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by

such employee for the use of a vehicle in performing such services—

"(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

"(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

"(2) DEFINITION OF QUALIFIED REIMBURSEMENTS.—For purposes of this subsection, the term 'qualified reimbursements' means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted for changes in the Consumer Price Index (as defined in section 1(f)(5)) since 1991."

(b) TECHNICAL AMENDMENT.—Section 6008 of the Technical and Miscellaneous Revenue Act of 1988 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

Subtitle B—Pension Simplification

PART I—SIMPLIFIED DISTRIBUTION RULES

SEC. 4201. REPEAL OF 5-YEAR INCOME AVERAGING FOR LUMP-SUM DISTRIBUTIONS.

(a) IN GENERAL.—Subsection (d) of section 402 (relating to taxability of beneficiary of employees' trust) is amended to read as follows:

"(d) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a)."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (D) of section 402(e)(4) (relating to other rules applicable to exempt trusts) is amended to read as follows:

"(D) LUMP SUM DISTRIBUTION.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

"(I) on account of the employee's death,

"(II) after the employee attains age 59½,

"(III) on account of the employee's separation from service, or

"(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(o)(5)).

"(ii) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—For purposes of determining the balance to the credit of an employee under clause (i)—

"(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

"(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

"(iii) COMMUNITY PROPERTY LAWS.—The provisions of this paragraph shall be applied without regard to community property laws.

"(iv) AMOUNTS SUBJECT TO PENALTY.—This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

"(v) BALANCE TO CREDIT OF EMPLOYEE NOT TO INCLUDE AMOUNTS PAYABLE UNDER QUALIFIED DOMESTIC RELATIONS ORDER.—For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

"(vi) TRANSFERS TO COST-OF-LIVING ARRANGEMENT NOT TREATED AS DISTRIBUTION.—For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within

the meaning of section 415(k)(2)) under a defined benefit plan.

"(vii) LUMP-SUM DISTRIBUTIONS OF ALTERNATE PAYEES.—If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee."

(2) Section 402(c) (relating to rules applicable to rollovers from exempt trusts) is amended by striking paragraph (10).

(3) Paragraph (1) of section 55(c) (defining regular tax) is amended by striking "shall not include any tax imposed by section 402(d) and".

(4) Paragraph (8) of section 62(a) (relating to certain portion of lump-sum distributions from pension plans taxed under section 402(d)) is hereby repealed.

(5) Section 401(a)(28)(B) (relating to coordination with distribution rules) is amended by striking clause (v).

(6) Subparagraph (B)(ii) of section 401(k)(10) (relating to distributions that must be lump-sum distributions) is amended to read as follows:

"(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump sum distribution' means any distribution of the balance to the credit of an employee immediately before the distribution."

(7) Section 406(c) (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(8) Section 407(c) (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(9) Section 691(c) (relating to deduction for estate tax) is amended by striking paragraph (5).

(10) Paragraph (1) of section 871(b) (relating to imposition of tax) is amended by striking "section 1, 55, or 402(d)(1)" and inserting "section 1 or 55".

(11) Subsection (b) of section 877 (relating to alternative tax) is amended by striking "section 1, 55, or 402(d)(1)" and inserting "section 1 or 55".

(12) Section 4980A(c)(4) is amended—

(A) by striking "to which an election under section 402(e)(4)(B) applies" and inserting "(as defined in section 402(e)(4)(D)) with respect to which the individual elects to have this paragraph apply",

(B) by adding at the end the following new flush sentence:

"An individual may elect to have this paragraph apply to only one lump-sum distribution.", and

(C) by striking the heading and inserting:

"(4) SPECIAL ONE-TIME ELECTION.—".

(13) Section 402(e) is amended by striking paragraph (5).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

(2) RETENTION OF CERTAIN TRANSITION RULES.—Notwithstanding any other provision of this section, the amendments made by this section shall not apply to any distribution for which the taxpayer elects the benefits of section 1122 (h)(3) or (h)(5) of the Tax Reform Act of 1986. For purposes of the preceding sentence, the rules of sections 402(c)(10) and 402(d) (as in effect after the amendments made by the Unemployment Compensation Amendments of 1992 and before the amendments made by this Act) shall apply.

SEC. 4202. REPEAL OF $5,000 EXCLUSION OF EMPLOYEES' DEATH BENEFITS.

(a) IN GENERAL.—Subsection (b) of section 101 is hereby repealed.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

SEC. 4203. SIMPLIFIED METHOD FOR TAXING ANNUITY DISTRIBUTIONS UNDER CERTAIN EMPLOYER PLANS.

(a) GENERAL RULE.—Subsection (d) of section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended to read as follows:

"(d) SPECIAL RULES FOR QUALIFIED EMPLOYER RETIREMENT PLANS.—

"(1) SIMPLIFIED METHOD OF TAXING ANNUITY PAYMENTS.—

"(A) IN GENERAL.—In the case of any amount received as an annuity under a qualified employer retirement plan—

"(i) subsection (b) shall not apply, and

"(ii) the investment in the contract shall be recovered as provided in this paragraph.

"(B) METHOD OF RECOVERING INVESTMENT IN CONTRACT.—

"(i) IN GENERAL.—Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

"(I) the investment in the contract (as of the annuity starting date), by

"(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (c)(3)(B) applies, the number of monthly annuity payments under such contract).

"(ii) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

"(iii) NUMBER OF ANTICIPATED PAYMENTS.—

"If the age of the primary annuitant on the annuity starting date is:	The number of anticipated payment is:
Not more than 55	300
More than 55 but not more than 60	260
More than 60 but not more than 65	240
More than 65 but not more than 70	170
More than 70	120

"(C) ADJUSTMENT FOR REFUND FEATURE NOT APPLICABLE.—For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

"(D) SPECIAL RULE WHERE LUMP SUM PAID IN CONNECTION WITH COMMENCEMENT OF ANNUITY PAYMENTS.—If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump sum payment—

"(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

"(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

"(E) EXCEPTION.—This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

"(F) ADJUSTMENT WHERE ANNUITY PAYMENTS NOT ON MONTHLY BASIS.—In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

"(G) QUALIFIED EMPLOYER RETIREMENT PLAN.—For purposes of this paragraph, the term 'qualified employer retirement plan' means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

"(2) TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in cases where the annuity starting date is after December 31, 1992.

SEC. 4204. REQUIRED DISTRIBUTIONS.

(a) IN GENERAL.—Section 401(a)(9)(C) (defining required beginning date) is amended to read as follows:

"(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'required beginning date' means April 1 of the calendar year following the later of—

"(I) the calendar year in which the employee attains age 70½,

"(II) the calendar year in which the employee retires.

"(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

"(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½, or

"(II) for purposes of section 408(a)(6) or (b)(3).

"(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

"(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B))."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1993.

PART II—INCREASED ACCESS TO PENSION PLANS

SEC. 4211. MODIFICATIONS OF SIMPLIFIED EMPLOYEE PENSIONS.

(a) INCREASE IN NUMBER OF ALLOWABLE PARTICIPANTS FOR SALARY REDUCTION ARRANGEMENTS.—Section 408(k)(6)(B) is amended by striking "25" each place it appears in the text and heading thereof and inserting "100".

(b) REPEAL OF PARTICIPATION REQUIREMENT.—Section 408(k)(6)(A) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(c) CONFORMING AMENDMENTS.—Clause (ii) of section 408(k)(6)(C) and clause (ii) of section 408(k)(6)(F) are each amended by striking "subparagraph (A)(iii)" and inserting "subparagraph (A)(ii)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1993.

SEC. 4212. TAX EXEMPT ORGANIZATIONS ELIGIBLE UNDER SECTION 401(k).

(a) GENERAL RULE.—Subparagraph (B) of section 401(k)(4) is amended to read as follows:

"(B) STATE AND LOCAL GOVERNMENTS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political

subdivision thereof, or any agency or instrumentality thereof. This subparagraph shall not apply to a rural cooperative plan."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning on or after December 31, 1992, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies.

SEC. 4213. DUTIES OF SPONSORS OF CERTAIN PROTOTYPE PLANS.

(a) IN GENERAL.—The Secretary of the Treasury may, as a condition of sponsorship, prescribe rules defining the duties and responsibilities of sponsors of master and prototype plans, regional prototype plans, and other Internal Revenue Service preapproved plans.

(b) DUTIES RELATING TO PLAN AMENDMENT, NOTIFICATION OF ADOPTERS, AND PLAN ADMINISTRATION.—The duties and responsibilities referred to in subsection (a) may include—

(1) the maintenance of lists of persons adopting the sponsor's plans, including the updating of such lists not less frequently than annually,

(2) the furnishing of notices at least annually to such persons and to the Secretary or his delegate, in such form and at such time as the Secretary shall prescribe,

(3) duties relating to administrative services to such persons in the operation of their plans, and

(4) other duties that the Secretary considers necessary to ensure that—

(A) the master and prototype, regional prototype, and other preapproved plans of adopting employers are timely amended to meet the requirements of the Internal Revenue Code of 1986 or of any rule or regulation of the Secretary, and

(B) adopting employers receive timely notification of amendments and other actions taken by sponsors with respect to their plans.

PART III—NONDISCRIMINATION PROVISIONS

SEC. 4221. DEFINITION OF HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Paragraph (1) of section 414(q) (defining highly compensated employee) is amended to read as follows:

"(1) IN GENERAL.—The term 'highly compensated employee' means any employee who—

"(A) was a 5-percent owner at any time during the year or the preceding year, or

"(B) had compensation for the preceding year from the employer in excess of $50,000.

The Secretary shall adjust the $50,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d)."

(b) SPECIAL RULE WHERE NO EMPLOYEES TREATED AS HIGHLY COMPENSATED.—Paragraph (2) of section 414(q) is amended to read as follows:

"(2) SPECIAL RULE IF NO EMPLOYEE DESCRIBED IN PARAGRAPH (1).—If no employee is treated as a highly compensated employee under paragraph (1), the highest paid officer for the year shall be treated as a highly compensated employee.

(c) TREATMENT OF FAMILY MEMBERS.—Paragraph (6) of section 414(q) is hereby repealed.

(d) CONFORMING AMENDMENTS.—

(1) Paragraphs (4), (5), (8), and (12) of section 414(q) are hereby repealed.

(2)(A) Section 414(r) is amended by adding at the end thereof the following new paragraph:

"(9) EXCLUDED EMPLOYEES.—For purposes of this subsection, the following employees shall be excluded:

"(A) Employees who have not completed 6 months of service.

"(B) Employees who normally work less than 17½ hours per week.

"(C) Employees who normally work not more than 6 months during any year.

"(D) Employees who have not attained the age of 21.

"(E) Except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) specified in such subparagraph."

(B) Subparagraph (A) of section 414(r)(2) is amended by striking "subsection (q)(8)" and inserting "paragraph (9)".

(3) Paragraph (17) of section 401(a) is amended by striking the last sentence.

(4) Subsection (l) of section 404 is amended by striking the last sentence.

(5) Section 1114(c)(4) of the Tax Reform Act of 1986 is amended by adding at the end the following new sentence: "Any reference in this paragraph to section 414(q) shall be treated as a reference to such section as in effect before the Revenue Act of 1992."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1993.

SEC. 4222. MODIFICATION OF ADDITIONAL PARTICIPATION REQUIREMENTS.

(a) GENERAL RULE.—Section 401(a)(26)(A) (relating to additional participation requirements) is amended to read as follows:

"(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

"(i) 50 employees of the employer, or

"(ii) the greater of—

"(I) 40 percent of all employees of the employer, or

"(II) 2 employees (or if there is only 1 employee, such employee)."

(b) Separate Line of Business Test.—Section 401(a)(26)(G) (relating to separate line of business) is amended by striking "paragraph (7)" and inserting "paragraph (2)(A) or (7)".

(c) Effective Dates.—The amendment made by this section shall apply to years beginning after December 31, 1991.

SEC. 4223. NONDISCRIMINATION RULES FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS AND MATCHING CONTRIBUTIONS.

(a) Alternative Methods of Satisfying Section 401(k) Nondiscrimination Tests.—Section 401(k) (relating to cash or deferred arrangements) is amended by adding at the end thereof the following new paragraph:

"(11) Alternative methods of meeting nondiscrimination requirements.—

"(A) In general.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

"(i) meets the contribution requirements of subparagraph (B) or (C), and

"(ii) meets the notice requirements of subparagraph (D).

"(B) Matching contributions.—

"(i) In general.—The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

"(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

"(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

"(ii) Rate for highly compensated employees.—The requirements of this subparagraph are not met if, under the arrangement, the matching contribution with respect to any elective contribution of a highly compensated employee at any level of compensation is greater than that with respect to an employee who is not a highly compensated employee.

"(iii) Alternative plan designs.—If the matching contribution with respect to any elective contribution at any specific level of compensation is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

"(I) the level of an employer's matching contribution does not increase as an employee's elective contributions increase, and

"(II) the aggregate amount of matching contributions with respect to elective contributions not in excess of such level of compensation is at least equal to the amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

"(C) NONELECTIVE CONTRIBUTIONS.—The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

"(D) NOTICE REQUIREMENT.—An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

"(i) is sufficiently accurate and comprehensive to appraise the employee of such rights and obligations, and

"(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

"(E) OTHER REQUIREMENTS.—

"(i) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions).

"(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), employer contributions under subparagraph (B) or (C) shall not be taken into account.

"(F) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement."

(b) ALTERNATIVE METHODS OF SATISFYING SECTION 401(m) NONDISCRIMINATION TESTS.—Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (10) as paragraph (11) and by adding after paragraph (9) the following new paragraph:

"(10) ALTERNATIVE METHOD OF SATISFYING TESTS.—

"(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

"(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(11),

"(ii) meets the notice requirements of subsection (k)(11)(D), and

"(iii) meets the requirements of subparagraph (B).

"(B) LIMITATION ON MATCHING CONTRIBUTIONS.—The requirements of this subparagraph are met if—

"(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

"(ii) the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase, and

"(iii) the matching contribution with respect to any highly compensated employee at a specific level of compensation is not greater than that with respect to an employee who is not a highly compensated employee."

(c) YEAR FOR COMPUTING NONHIGHLY COMPENSATED EMPLOYEE PERCENTAGE.—

(1) CASH OR DEFERRED ARRANGEMENTS.—Clause (ii) of section 401(k)(3)(A) is amended—

(A) by striking "such year" and inserting "the plan year", and

(B) by striking "for such plan year" and inserting "the preceding plan year".

(2) MATCHING AND EMPLOYEE CONTRIBUTIONS.—Section 401(m)(2)(A) is amended—

(A) by inserting "for such plan year" after "highly compensated employee", and

(B) by inserting "for the preceding plan year" after "eligible employees" each place it appears in clause (i) and clause (ii).

(d) SPECIAL RULE FOR DETERMINING AVERAGE DEFERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

(1) Paragraph (3) of section 401(k) is amended by adding at the end thereof the following new subparagraph:

"(E) For purposes of this paragraph, in the case of the first plan year of any plan, the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

"(i) 3 percent, or

"(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year."

(2) Paragraph (3) of section 401(m) is amended by adding at the end thereof the following: "Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.".

(e) DISTRIBUTION OF EXCESS CONTRIBUTIONS.—

(1) Subparagraph (C) of section 401(k)(8) (relating to arrangement not disqualified if excess contributions distributed) is amended by striking "on the basis of the respective portions of the excess contributions attributable to each of such employ-

ees" and inserting "on the basis of the amount of contributions by, or on behalf of, each of such employees".

(2) Subparagraph (C) of section 401(m)(6) (relating to method of distributing excess aggregate contributions) is amended by striking "on the basis of the respective portions of such amounts attributable to each of such employees" and inserting "on the basis of the amount of contributions on behalf of, or by, each such employee".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1993.

PART IV—MISCELLANEOUS SIMPLIFICATION

SEC. 4231. TREATMENT OF LEASED EMPLOYEES.

(a) GENERAL RULE.—Subparagraph (C) of section 414(n)(2) (defining leased employee) is amended to read as follows:

"(C) such services are performed under significant direction or control by the recipient."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1992, but shall not apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act pursuant to section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee.

SEC. 4232. MODIFICATIONS OF COST-OF-LIVING ADJUSTMENTS.

(a) IN GENERAL.—Section 415(d) (relating to cost-of-living adjustments) is amended to read as follows:

"(d) COST-OF-LIVING ADJUSTMENTS.—

"(1) IN GENERAL.—The Secretary shall adjust annually—

"(A) the $90,000 amount in subsection (b)(1)(A), and

"(B) in the case of a participant who separated from service, the amount taken into account under subsection (b)(1)(B),

for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

"(2) METHOD.—

"(A) IN GENERAL.—The regulations prescribed under paragraph (1) shall provide for adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

"(B) PERIODS FOR ADJUSTMENT OF DOLLAR AMOUNT.—For purposes of paragraph (1)(A)—

"(i) IN GENERAL.—The adjustment with respect to any calendar year shall be based on the increase in the applicable index as of the close of the calendar quarter ending September 30 of the preceding calendar year over such index as of the close of the base period.

"(ii) BASE PERIOD.—For purposes of clause (i), the base period is the calendar quarter beginning October 1, 1986.

"(C) Base period for separations.—For purposes of paragraph (1)(B), the base period is the last calendar quarter of the calendar year preceding the calendar year in which the participant separated from service.

"(3) Rounding.—Any amount determined under paragraph (1) (or by reference to this subsection) shall be rounded to the nearest $1,000, except that the amounts under sections 402(g)(1) and 408(k)(2)(C) shall be rounded to the nearest $100."

(b) Effective Date.—The amendments made by this section apply to adjustments with respect to calendar years beginning after December 31, 1992.

SEC. 4233. PLANS COVERING SELF-EMPLOYED INDIVIDUALS.

(a) Aggregation Rules.—Section 401(d) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended to read as follows:

"(d) Contribution Limit on Owner-Employees.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established."

(b) Effective Date.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4234. ELIMINATION OF SPECIAL VESTING RULE FOR MULTIEMPLOYER PLANS.

(a) In General.—Paragraph (2) of section 411(a) (relating to minimum vesting standards) is amended—

(1) by striking "subparagraph (A), (B), or (C)" and inserting "subparagraph (A) or (B)"; and

(2) by striking subparagraph (C).

(b) Effective Date.—The amendments made by this section shall apply to plan years beginning on or after the earlier of—

(1) the later of—

(A) January 1, 1994, or

(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 1996.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply.

SEC. 4235. FULL-FUNDING LIMITATION OF MULTIEMPLOYER PLANS.

(a) Full-Funding Limitation.—Section 412(c)(7)(C) (relating to full-funding limitation) is amended—

(1) by inserting "or in the case of a multiemployer plan," after "paragraph (6)(B),", and

(2) by inserting "AND MULTIEMPLOYER PLANS" after "PARAGRAPH (6)(B)" in the heading thereof.

(b) Valuation.—Section 412(c)(9) is amended—

(1) by inserting "(3 years in the case of a multiemployer plan)" after "year", and

(2) by striking "ANNUAL VALUATION" in the heading and inserting "VALUATION".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4236. ALTERNATIVE FULL-FUNDING LIMITATION.

(a) IN GENERAL.—Subsection (c) of section 412 (relating to minimum funding standards) is amended by redesignating paragraphs (8) through (11) as paragraphs (9) through (12), respectively, and by adding after paragraph (7) the following new paragraph:

"(8) ALTERNATIVE FULL-FUNDING LIMITATION.—

"(A) GENERAL RULE.—An employer may elect the full-funding limitation under this paragraph with respect to any defined benefit plan of the employer in lieu of the full-funding limitation determined under paragraph (7) if the requirements of subparagraphs (C) and (D) are met.

"(B) ALTERNATIVE FULL-FUNDING LIMITATION.—The full-funding limitation under this paragraph is the full-funding limitation determined under paragraph (7) without regard to subparagraph (A)(i)(I) thereof.

"(C) REQUIREMENTS RELATING TO PLAN ELIGIBILITY.—

"(i) IN GENERAL.—The requirements of this subparagraph are met with respect to a defined benefit plan if—

"(I) as of the 1st day of the election period, the average accrued liability of participants accruing benefits under the plan for the 5 immediately preceding plan years is at least 80 percent of the plan's total accrued liability,

"(II) the plan is not a top-heavy plan (as defined in section 416(g)) for the 1st plan year of the election period or either of the 2 preceding plan years, and

"(III) each defined benefit plan of the employer (and each defined benefit plan of each employer who is a member of any controlled group which includes such employer) meets the requirements of subclauses (I) and (II).

"(ii) FAILURE TO CONTINUE TO MEET REQUIREMENTS.—

"(I) If any plan fails to meet the requirement of clause (i)(I) for any plan year during an election period, the benefits of the election under this paragraph shall be phased out under regulations prescribed by the Secretary.

"(II) If any plan fails to meet the requirement of clause (i)(II) for any plan year during an election period, such plan shall be treated as not meeting the requirements of clause (i) for the remainder of the election period.

If there is a failure described in subclause (I) or (II) with respect to any plan, such plan (and each plan de-

scribed in clause (i)(III) with respect to such plan) shall be treated as not meeting the requirements of clause (i) for any of the 10 plan years beginning after the election period.

"(D) REQUIREMENTS RELATING TO ELECTION.—

"(i) IN GENERAL.—The requirements of this subparagraph are met with respect to an election if—

"(I) FILING DATE.—Notice of such election is filed with the Secretary (in such form and manner and containing such information as the Secretary may provide) by January 1 of any calendar year, and is effective as of the 1st day of the election period beginning on or after January 1 of the following calendar.

"(II) CONSISTENT ELECTION.—Such an election is made for all defined benefit plans maintained by the employer or by any member of a controlled group which includes the employer.

"(ii) TRANSITION PERIOD.—In the case of any election period beginning on or after January 1, 1993, and before January 1, 1994, the requirements of clause (i) shall not apply and the requirements of this subparagraph are met with respect to such election period if—

"(I) FILING DATE.—Notice of election is filed with the Secretary by April 1, 1993.

"(II) INFORMATION.—The notice sets forth the name and tax identification number of the plan sponsor, the names and tax identification numbers of the plans to which the election applies, the limitation under paragraph (7) (determined with and without regard to this paragraph), and a signed certification by an officer of the employer stating that the requirements of this paragraph have been met.

"(iii) REVENUE OFFSET PROCEDURES.—The Secretary shall, by July 1, 1993, notify defined benefit plans that have not made an election under this paragraph for the transition period described in clause (ii) of the adjustment required by subparagraph (H). The revenue offset for the transition period shall apply to plan years beginning on or after January 1, 1993, and before January 1, 1994.

"(iv) EXCESS CONTRIBUTIONS MADE BY NON-ELECTING PLANS.—To the extent a defined benefit plan sponsor makes a contribution to a defined benefit plan with respect to the transition period described in clause (ii) which exceeds the limitation of paragraph (7), as adjusted by the Secretary for the transition period, the sponsor shall offset the excess contribution against allowable contributions to the plan in subsequent quarters in the taxable year of the sponsor. If no subsequent contributions may be made for the taxable year, the trustee of the defined benefit plan shall return the excess contribution to the sponsor in that taxable year

or the following taxable year. Notwithstanding any other provision of this title, no deduction shall be allowed for any contribution made in excess of the limitation of paragraph (7), as adjusted by the Secretary for the transition period, and no penalty shall apply with respect to contributions made in excess of such limitation to the extent such excess contributions are either used to offset subsequent contributions, or returned to the plan sponsor, as provided in this clause.

"(E) TERM OF ELECTION.—Any election made under this paragraph shall apply for the election period.

"(F) OTHER CONSEQUENCES OF ELECTION.—

"(i) NO FUNDING WAIVERS.—In the case of a plan with respect to which an election is made under this paragraph, no waiver may be granted under subsection (d) for any plan year beginning after the date the election was made and ending at the close of the election period with respect thereto.

"(ii) FAILURE TO MAKE SUCCESSIVE ELECTIONS.—If an election is made under this paragraph with respect to any plan and such an election does not apply for each successive plan year of such plan, such plan shall be treated as not meeting the requirements of subparagraph (C) for the period of 10 plan years beginning after the close of the last election period for such plan.

"(G) DEFINITIONS.—For purposes of this paragraph—

"(i) ELECTION PERIOD.—The term 'election period' means the period of 5 consecutive plan years beginning with the 1st plan year for which the election is made.

"(ii) CONTROLLED GROUP.—The term 'controlled group' means all persons who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

"(H) PROCEDURES IF ALTERNATIVE FUNDING LIMITATION REDUCES NET FEDERAL REVENUES.—

"(i) IN GENERAL.—At least once with respect to each fiscal year, the Secretary shall estimate whether the application of this paragraph will result in a net reduction in Federal revenues for such fiscal year.

"(ii) ADJUSTMENT OF FULL-FUNDING LIMITATION IF REVENUE SHORTFALL.—If the Secretary estimates that the application of this paragraph will result in a more than insubstantial net reduction in Federal revenues for any fiscal year, the Secretary—

"(I) shall make the adjustment described in clause (iii), and

"(II) to the extent such adjustment is not sufficient to reduce such reduction to an insubstantial amount, shall make the adjustment described in clause (iv).

Such adjustments shall apply only to defined benefit plans with respect to which an election under this paragraph is not in effect.

"(iii) REDUCTION IN LIMITATION BASED ON 150 PERCENT OF CURRENT LIABILITY.—The adjustment described in this clause is an adjustment which substitutes a percentage (not lower than 140 percent) for the percentage described in paragraph (7)(A)(i)(I) determined by reducing the percentage of current liability taken into account with respect to participants who are not accruing benefits under the plan.

"(iv) REDUCTION IN LIMITATION BASED ON ACCRUED LIABILITY.—The adjustment described in this clause is an adjustment which reduces the percentage of accrued liability taken into account under paragraph (7)(A)(i)(II). In no event may the amount of accrued liability taken into account under such paragraph after the adjustment be less than 140 percent of current liability."

(b) ALTERATION OF DISCRETIONARY REGULATORY AUTHORITY.—Subparagraph (D) of section 412(c)(7) is amended by striking "provide—" and all that follows through "(iii) for" and inserting "provide for".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993.

SEC. 4237. DISTRIBUTIONS UNDER RURAL COOPERATIVE PLANS.

(a) DISTRIBUTIONS AFTER CERTAIN AGE.—Section 401(k)(7) is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS.—A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) merely by reason of a distribution to a participant after attainment of age 59½."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 4238. TREATMENT OF GOVERNMENTAL PLANS UNDER SECTION 415.

(a) DEFINITION OF COMPENSATION.—Subsection (k) of section 415 (regarding limitations on benefits and contributions under qualified plans) is amended by adding immediately after paragraph (2) thereof the following new paragraph:

"(3) DEFINITION OF COMPENSATION FOR GOVERNMENTAL PLANS.—For purposes of this section, in the case of a governmental plan (as defined in section 414(d)), the term 'compensation' includes, in addition to the amounts described in subsection (c)(3)—

"(A) any elective deferral (as defined in section 402(g)(3)), and

"(B) any amount which is contributed by the employer at the election of the employee and which is not includible in the gross income of an employee under section 125 or 457."

(b) COMPENSATION LIMIT.—Subsection (b) of section 415 is amended by adding immediately after paragraph (10) the following new paragraph:

"(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL PLANS.—*In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply."*

(c) TREATMENT OF CERTAIN EXCESS BENEFIT PLANS.—

(1) IN GENERAL.—*Section 415 is amended by adding at the end thereof the following new subsection:*

"(m) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—

"(1) GOVERNMENTAL PLAN NOT AFFECTED.—*In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115.*

"(2) TAXATION OF PARTICIPANT.—*For purposes of this chapter—*

"(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

"(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

"(3) QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT.—*For purposes of this subsection, the term 'qualified governmental excess benefit arrangement' means a portion of a governmental plan if—*

"(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section,

"(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

"(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits."

(2) COORDINATION WITH SECTION 457.—*Subsection (e) of section 457 is amended by adding at the end thereof the following new paragraph:*

"(15) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—*Subsections (b)(2) and (c)(1) shall not apply to any qualified governmental excess benefit arrangement*

(as defined in section 415(m)(3)), and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan."

(3) CONFORMING AMENDMENT.—Paragraph (2) of section 457(f) is amended by striking the word "and" at the end of subparagraph (C), by striking the period after subparagraph (D) and inserting the words ", and", and by inserting immediately thereafter the following new subparagraph:

"(E) a qualified governmental excess benefit arrangement described in section 415(m)."

(d) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS.—Paragraph (2) of section 415(b) is amended by adding at the end thereof the following new subparagraph:

"(I) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS PROVIDED UNDER GOVERNMENTAL PLANS.—Subparagraph (B) of paragraph (1), subparagraph (C) of this paragraph, and paragraph (5) shall not apply to—

"(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or

"(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee."

(e) REVOCATION OF GRANDFATHER ELECTION.—Subparagraph (C) of section 415(b)(10) is amended by adding at the end thereof the following new sentence: "An election made pursuant to the preceding sentence to have the provisions of this paragraph applied to the plan may be revoked not later than the last day of the 3rd plan year beginning after the date of enactment with respect to all plan years as to which such election has been applicable and all subsequent plan years; provided that any amount paid by the plan in a taxable year ending after revocation of such election in respect of benefits attributable to a taxable year during which such election was in effect shall be includible in income by the recipient in accordance with the rules of this chapter in the taxable year in which such amount is received (except that such amount shall be treated as received for purposes of the limitations imposed by this section in the earlier taxable year or years to which such amount is attributable)."

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), and (d) shall apply to taxable years beginning on or after the date of the enactment of this Act. The amendments made by subsection (e) shall apply with respect to election revocations adopted after the date of the enactment of this Act.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), such plan shall be treated as satisfying the requirements of section 415 of such Code for all taxable years beginning before the date of the enactment of this Act.

SEC. 4239. UNIFORM RETIREMENT AGE.

(a) DISCRIMINATION TESTING.—Paragraph (5) of section 401(a) (relating to special rules relating to nondiscrimination requirements) is amended by adding at the end thereof the following new subparagraph:

"(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

"(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

"(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4240. UNIFORM PENALTY PROVISIONS TO APPLY TO CERTAIN PENSION REPORTING REQUIREMENTS.

(a) IN GENERAL.—

(1) Paragraph (1) of section 6724(d) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by inserting after subparagraph (B) the following new subparagraph:

"(C) any statement of the amount of payments to another person required to be made to the Secretary under—

"(i) section 408(i) (relating to reports with respect to individual retirement accounts or annuities), or

"(ii) section 6047(d) (relating to reports by employers, plan administrators, etc.)."

(2) Paragraph (2) of section 6724(d) is amended by striking "or" at the end of subparagraph (R), by striking the period at the end of subparagraph (S) and inserting a comma, and by inserting after subparagraph (S) the following new subparagraphs:

"(T) section 408(i) (relating to reports with respect to individual retirement plans) to any person other than the Secretary with respect to the amount of payments made to such person, or

"(U) section 6047(d) (relating to reports by plan administrators) to any person other than the Secretary with respect to the amount of payments made to such person."

(b) MODIFICATION OF REPORTABLE DESIGNATED DISTRIBUTIONS.—

(1) SECTION 408.—Subsection (i) of section 408 (relating to individual retirement account reports) is amended by inserting "aggregating $10 or more in any calendar year" after "distributions".

(2) SECTION 6047.—Paragraph (1) of section 6047(d) (relating to reports by employers, plan administrators, etc.) is amended by adding at the end thereof the following new sentence: "No return or report may be required under the preceding sentence

with respect to distributions to any person during any year unless such distributions aggregate $10 or more."

(c) QUALIFYING ROLLOVER DISTRIBUTIONS.—Section 6652(i) is amended—

(1) by striking "the $10" and inserting "$100", and

(2) by striking "$5,000" and inserting "$50,000".

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6047(f) is amended to read as follows:

(1) For provisions relating to penalties for failures to file returns and reports required under this section, see sections 6652(e), 6721, and 6722."

(2) Subsection (e) of section 6652 is amended by adding at the end thereof the following new sentence: "This subsection shall not apply to any return or statement which is an information return described in section 6724(d)(1)(C)(ii) or a payee statement described in section 6724(d)(2)(U)."

(3) Subsection (a) of section 6693 is amended by adding at the end thereof the following new sentence: "This subsection shall not apply to any report which is an information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(T)."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to returns, reports, and other statements the due date for which (determined without regard to extensions) is after December 31, 1992.

SEC. 4241. CONTRIBUTIONS ON BEHALF OF DISABLED EMPLOYEES.

(a) ALL DISABLED PARTICIPANTS RECEIVING CONTRIBUTIONS.—Section 415(c)(3)(C) is amended by adding at the end thereof the following: "If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4242. AFFILIATED EMPLOYERS.

(a) IN GENERAL.—For purposes of Treasury Regulations section 1.501(c)(9) 092(a)(1), a group of employers shall be deemed to be affiliated if they are substantially all section 501(c)(12) organizations which perform services (or with respect to which their members perform services) which are the same or are directly related to each other.

(b) SECTION 501(c)(12) ORGANIZATION.—For purposes of this section, the term "section 501(c)(12) organization" means—

(1) any organization described in section 501(c)(12) of the Internal Revenue Code of 1986,

(2) any organization providing a service which is the same as a service which is (or could be) provided by an organization described in paragraph (1),

(3) any organization described in paragraph (4) or (6) of section 501(c) of such Code, but only if at least 80 percent of the members of the organization are organizations described in paragraph (1) or (2), and

(4) any organization which is a national association of organizations described in paragraph (1), (2), or (3).
An organization described in paragraph (2) (but not in paragraph (1)) shall not be treated as a section 501(c)(12) organization with respect to a voluntary employees' beneficiary association unless a substantial number of employers maintaining such association are described in paragraph (1).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4243. SPECIAL RULES FOR PLANS COVERING PILOTS.

(a) GENERAL RULE.—

(1) Subparagraph (B) of section 410(b)(3) is amended to read as follows:

"(B) in the case of a plan established or maintained by one or more employers to provide contributions or benefits for air pilots employed by one or more common carriers engaged in interstate or foreign commerce or air pilots employed by carriers transporting mail for or under contract with the United States Government, all employees who are not air pilots."

(2) Paragraph (3) of section 410(b) is amended by striking the last sentence and inserting the following new sentence: "Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees who are not air pilots or for air pilots whose principal duties are not customarily performed aboard aircraft in flight."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to years beginning after December 31, 1992.

SEC. 4244. NATIONAL COMMISSION ON PRIVATE PENSION PLANS.

(a) ESTABLISHMENT.—There is hereby established a commission to be known as the National Commission on Private Pension Plans (in this section referred to as the "Commission").

(b) MEMBERSHIP.—

(1) The Commission shall consist of—

(A) 6 members to be appointed by the President;

(B) 6 members to be appointed by the Speaker of the House of Representatives; and

(C) 6 members to be appointed by the President pro tempore of the Senate.

(2) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of the committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant private pension programs.

(c) DUTIES AND FUNCTIONS OF COMMISSION; PUBLIC HEARINGS IN DIFFERENT GEOGRAPHICAL AREAS; BROAD SPECTRUM OF WITNESSES AND TESTIMONY.—

(1)(A) It shall be the duty and function of the Commission to conduct a full and complete review and study of retirement income policy, including—

(i) trends in retirement savings in the United States;

(ii) existing Federal incentives and programs that are established to encourage and protect such savings; and

(iii) new Federal incentives and programs that are needed to encourage and protect such savings.

(B) In fulfilling its duties under paragraph (1), the Commission shall address—

(i) the amount and sources of Federal and private funds, including tax expenditures (as defined in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622)), needed to finance the incentives and programs referred to in subparagraph (A)(ii) and any new Federal incentive or program that the Commission recommends be established;

(ii) the most efficient and effective manner, considering the needs of retirement plan sponsors for simplicity, reasonable cost, and appropriate incentives, of ensuring that individuals in the United States will have adequate retirement savings;

(iii) the work force and demographic trends that affect the pensions of future retirees, including specific problems of the contingent work force;

(iv) the role of retirement savings in the economy of the United States;

"(v) sources of retirement income other than private pensions that are available to individuals in the United States;

(vi) the shift away from insured and qualified pension benefits in the United States; and

(vii) the adequacy of procedures to resolve disputes involving such benefits.

(2) The Commission (and any committees that it may form) may conduct public hearings in order to receive the views of a broad spectrum of the public on the status of the Nation's private retirement system.

(d) REPORT TO THE PRESIDENT AND CONGRESS; RECOMMENDATIONS.—The Commission shall submit to the President, to the Majority Leader and the Minority Leader of the Senate, and to the Majority Leader and the Minority Leader of the House of Representatives a report no later than September 1, 1994, setting forth the results of the study under subsection (d)(1). The final report shall also set forth recommendations where appropriate for increasing the level and security of private retirement savings. The recommendations shall include measures that address the needs of future retirees for—

(1) appropriate pension plan coverage and other mechanisms for saving for retirement;

(2) an adequate retirement income;

(3) preservation and portability of benefits accumulated by participating in private pension plans; and

(4) information concerning pension plan benefits.

A recommendation of the Commission for a new Federal incentive or program that would result in an increase in the Federal budget deficit shall not appear in the report unless it is accompanied by a recommendation for offsetting the increase.

(e) TIME OF APPOINTMENT OF MEMBERS; VACANCIES; ELECTION OF CHAIRMAN; QUORUM; CALLING OF MEETINGS; NUMBER OF MEETINGS; VOTING; COMPENSATION AND EXPENSES.—

(1)(A) Members of the Commission shall be appointed during the period beginning February 1, 1993, and ending March 1, 1993, for terms ending on September 1, 1994.

(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

(2) The Commission shall elect 1 of its members to serve as Chairman of the Commission.

(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(4) The Commission shall meet at the call of the Chairman.

(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(f) EXECUTIVE DIRECTOR AND ADDITIONAL PERSONNEL; APPOINTMENT AND COMPENSATION; CONSULTANTS.—

(1) The Commission shall appoint an Executive Director of the Commission. In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(2) The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(g) TIME AND PLACE OF HEARINGS AND NATURE OF TESTIMONY AUTHORIZED.—In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

(h) DATA AND INFORMATION FROM OTHER AGENCIES AND DEPARTMENTS.—

(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

(i) SUPPORT SERVICES BY GENERAL SERVICES ADMINISTRATION.—The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 1993 and 1994, such sums as may be necessary to carry out this section.

(k) *DONATIONS ACCEPTED AND DEPOSITED IN TREASURY IN SEPARATE FUND; EXPENDITURES.*—

(1) The Commission is authorized to accept donations of money, property, or personal services. Funds received from donations shall be deposited in the Treasury in a separate fund created for this purpose. Funds appropriated for the Commission and donated funds may be expended for such purposes as official reception and representation expenses, public surveys, public service announcements, preparation of special papers, analyses, and documentaries, and for such other purposes as determined by the Commission to be in furtherance of its mission to review national issues affecting private pension plans.

(2) Expenditures of appropriated and donated funds shall be subject to such rules and regulations as may be adopted by the Commission and shall not be subject to Federal procurement requirements.

(l) PUBLIC SURVEYS.—The Commission is authorized to conduct such public surveys as it deems necessary in support of its review of national issues affecting private pension plans and, in conducting such surveys, the Commission shall not be deemed to be an "agency" for the purpose of section 3502 of title 44, United States Code.

SEC. 4245. CHURCH PLANS.

(a) VESTING REQUIREMENTS.—

(1) IN GENERAL.—Section 411(e) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR CHURCH PLANS.—A plan described in paragraph (1)(B) shall be treated as meeting the requirements of this section for purposes of section 401(a) if the plan satisfies the requirements of subparagraph (A) and either of the requirements of subparagraph (B) or (C):

"(A) EMPLOYEE CONTRIBUTIONS ARE NONFORFEITABLE.—An employee's rights in the employee's accrued benefit derived from the employee's own contributions are nonforfeitable.

"(B) 10-YEAR VESTING.—A plan satisfies the requirements of this paragraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

"(C) 5- TO 15-YEAR VESTING.—A plan satisfies the requirements of this paragraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

"Years of Service	*Nonforfeitable percentage*
5	*25*
6	*30*
7	*35*
8	*40*
9	*45*
10	*50*
11	*60*
12	*70*
13	*80*

14	*90*
15 or more	*100.*

"(D) YEARS OF SERVICE.—For purposes of this paragraph, an employee's years of service shall be determined in accordance with any reasonable method selected by the plan."

(2) CONFORMING AMENDMENTS.—

(A) The last sentence of section 401(a) is amended by striking "subsection (e)(2)" and inserting "subsection (e) (2) or (3)".

(B) Section 411(e) is amended—

(i) by inserting "or (3)" after "(2)" in paragraph (1), and

(ii) by inserting "(other than paragraph (1)(B))" after "paragraph (1)" in paragraph (2).

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 1993.

(b) RULES GENERALLY APPLICABLE TO CHURCH PLANS.—

(1) IN GENERAL.—Section 414(e) is amended by adding at the end the following new paragraph:

"(5) SPECIAL RULES APPLICABLE TO CHURCH PLANS.—For purposes of sections 401 and 403, the following rules shall apply:

"(A) FAILURE OF ONE ORGANIZATION MAINTAINING PLAN NOT TO DISQUALIFY PLAN.—If one or more organizations maintaining a church plan fail to satisfy the requirements of section 401 (or in the case of a contract described in section 403), such plan shall not be treated as failing to satisfy the requirements of section 401 or 403, whichever is applicable, with respect to other organizations maintaining such plan.

"(B) CERTAIN EMPLOYEES NOT CONSIDERED HIGHLY COMPENSATED AND EXCLUDED EMPLOYEES.—No employee shall be considered an officer, person whose principal duties consist in supervising the work of other employees, or highly compensated employee with respect to a church plan if—

"(i) such employee during the year or the preceding year received compensation from the employer of less than $50,000, or

"(ii) such employee is an employee described in section 410(b)(3)(A).

The Secretary shall adjust the $50,000 amount under this paragraph at the same time and in the same manner as under section 415(d).

(2) EFFECTIVE DATE.—The amendment made by this section shall be effective for years beginning before, on, or after December 31, 1991.

(c) PARTICIPATION BY MINISTERS.—

(1) ANNUITY CONTRACTS.—Section 403(b) is amended by adding at the end the following new paragraph:

"(13) PARTICIPATION BY MINISTERS.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'employee' shall include a duly ordained, commissioned, or licensed minister of a church in the exercise of

his ministry who is a self-employed individual (within the meaning of section 401(c)(1)(B)) or any duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry who is employed by an organization other than an organization described in section 501(c)(3).

"(B) TREATMENT OF EMPLOYEE.—For purposes of this subsection, an individual treated as an employee under subparagraph (A) shall be treated as an employee of an organization described in section 501(c)(3) and which is exempt from tax under section 501(a).

"(C) COMPENSATION AND YEARS OF SERVICE.—

"(i) COMPENSATION.—In determining the compensation of a minister to whom subparagraph (A) applies who is a self-employed minister, such minister's earned income (within the meaning of section 401(c)(2)) shall be substituted for compensation received from an employer under paragraph (3).

"(ii) YEARS OF SERVICE.—In determining the years of service of a minister to whom subparagraph (A) applies who is a self-employed minister, the years (and portions of years) in which such minister was a self-employed individual (within the meaning of section 401(c)(1)(B)) shall be included for purposes of paragraph (4)."

(2) MINISTERS EXCLUDED FOR CERTAIN PURPOSES.—Section 414(e) is amended by adding at the end the following new paragraph:

"(6) EXCLUSION OF MINISTERS.—Notwithstanding any other provision of this title, if a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry participates in a church plan (within the meaning of section 414(e)), then such minister shall be excluded from consideration for purposes of applying sections 401(a)(3), 401(a)(4), and 401(a)(5), as such sections in effect on September 1, 1974, and sections 401(a)(4), 401(a)(5), 401(a)(26), 401(k)(3), 401(m), 403(b)(1)(D) (including section 403(b)(12)), and 410, to any stock bonus, pension, profit-sharing, or annuity plan (including an annuity described in section 403(b) or a retirement income account described in section 403(b)(9)) described in this part. For purposes of this part, the church plan in which such minister participates shall be treated as a plan or contract meeting the requirements of section 401(a), or 403(b) (including section 403(b)(9)) with respect to such minister's participation."

(3) DEDUCTIBILITY.—Section 404(a) is amended by adding at the end the following new paragraph:

"(10) CONTRIBUTIONS BY CERTAIN MINISTERS TO RETIREMENT INCOME ACCOUNTS.—If contributions are made by a minister described in section 403(b)(13)(A) to a retirement income account described in section 403(b)(9) and not by a person other than such minister, such contributions shall be treated as made to a trust which is exempt from tax under section 501(a) which is a part of a plan which is described in section 401(a) and shall be deductible under this subsection to the extent such con-

tributions do not exceed the exclusion allowance of such minister determined under section 403(b)(2).".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall be effective for years beginning before, on, or after December 31, 1991, except that the amendment made by paragraph (3) shall be effective for years beginning after December 31, 1991.

(d) DISTRIBUTION REQUIREMENT.—

(1) IN GENERAL.—Subparagraph (A) of section 403(b)(11) is amended by inserting "or, in the case of a retirement income account described in paragraph (9), within the meaning of section 401(k)(2)" after "section 72(m)(7)".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning after December 31, 1988.

(e) BEGINNING DATE FOR DISTRIBUTIONS.—

(1) IN GENERAL.—Clause (iv) of section 401(a)(9)(C), as amended by section 4204, is amended by striking the last sentence and inserting the following new sentence: "For purposes of this clause, the term 'church plan' has the meaning given such term by section 414(e)."

(2) EFFECTIVE DATE.—In the case of years beginning before January 1, 1994, to which the amendments made by section 1121(b) of the Tax Reform Act of 1986 apply, the required beginning date under section 401(a)(9)(C) of the Internal Revenue Code of 1986 for any employee of a church plan (as defined in section 414(e) of such Code) shall not begin before April 1 of the calendar year following the calendar year in which the employee retires (or, if later, the date determined without regard to this paragraph).

(f) CHURCH PLAN MODIFICATION TO SEPARATE ACCOUNT REQUIREMENT OF SECTION 401(h).—

(1) EXCEPTION TO SEPARATE ACCOUNT REQUIREMENT.—Section 401(h) is amended by adding the following new sentence at the end thereof: "Notwithstanding the preceding sentence, in the case of a pension or annuity plan that is a church plan (within the meaning of section 414(e)) which is maintained by more than one employer, paragraph (6) shall not apply to an employee who is a key employee for purposes of section 416 solely because such employee is described in section 416(i)(1)(A)(i) (relating to officers having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A)).".

(2) APPLICATION OF SECTION 415(l).—Section 415(l)(1) is amended to read as follows:

"(1) IN GENERAL.—For purposes of this section, the following shall be treated as an annual addition to a defined contribution plan for purposes of subsection (c):

"(A) contributions allocated to any individual medical account which is part of a pension or annuity plan; and

"(B) the actuarially determined amount of prefunding for the insurance value of benefits which are—

"(i) described in section 401(h);

"(ii) paid under a pension or annuity plan that is a church plan (within the meaning of section 414(e));

"(iii) paid under a plan maintained by more than one employer; and

"(iv) payable solely to an employee who is a key employee for purposes of section 415 solely because such employee is described in section 416(i)(1)(A)(i) (relating to officers having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A)), his spouse, or his dependents.

Subparagraph (B) of section (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.".

(3) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning after March 31, 1984.

(g) REPEAL OF ELECTIVE DEFERRAL CATCH-UP LIMITATION FOR RETIREMENT INCOME ACCOUNTS—

(1) IN GENERAL.—Clause (iii) of section 402(g)(8)(A) is amended to read as follows:

"(iii) except in the case of elective deferrals under a retirement income account described in section 403(b)(9), the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary).".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall be effective as if included in the provision of the Tax Reform Act of 1986 to which such amendment relates.

(h) CHURCH PLANS MAY INCREASE BENEFIT PAYMENTS.—

(1) IN GENERAL.—A retirement income account described in section 403(b)(9) of the Internal Revenue Code of 1986, or a church plan (within the meaning of section 414(e) of such Code) that is a plan described in section 401(a) of such Code, shall not fail to be described in such sections merely because it provides additional benefit payments to participants (and their beneficiaries)—

(A) on an annual basis, to take into account the investment performance of the underlying assets or favorable interest or mortality experience in a year, or

(B) in an amount not in excess of 5 percent per year.

(2) EFFECTIVE DATE.—This subsection shall be effective for years beginning before, on, or after December 31, 1991.

SEC. 4246. TREATMENT OF DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) SPECIAL RULES FOR PLAN DISTRIBUTIONS.—Paragraph (9) of section 457(e) (relating to other definitions and special rules) is amended to read as follows:

"(9) BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—

"(A) TOTAL AMOUNT PAYABLE IS $3,500 OR LESS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the partici-

pant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if—

"(i) such amount does not exceed $3,500, and

"(ii) such amount may be distributed only if—

"(I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and

"(II) there has been no prior distribution under the plan to such participant to which this subparagraph applied.

A plan shall not be treated as failing to meet the distribution requirements of subsection (d) by reason of a distribution to which this subparagraph applies.

"(B) ELECTION TO DEFER COMMENCEMENT OF DISTRIBUTIONS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if—

"(i) such election is made after amounts may be available under the plan in accordance with subsection (d)(1)(A) and before commencement of such distributions, and

"(ii) the participant may make only 1 such election."

(b) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—Subsection (e) of section 457 is amended by adding at the end thereof the following new paragraph:

"(14) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—The Secretary shall adjust the $7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d), except that the base year in applying such section for purposes of this paragraph shall be 1992."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 4247. TREATMENT OF EMPLOYER REVERSIONS REQUIRED BY CONTRACT TO BE PAID TO THE UNITED STATES.

(a) IN GENERAL.—Subparagraph (B) of section 4980(c)(2) (defining employer reversion) is amended by striking "or" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", or", and by adding at the end thereof the following new clause:

"(iii) any distribution to the employer to the extent that the distribution is paid within a reasonable period to the United States in satisfaction of a Federal claim for an equitable share of the plan's surplus assets, as determined pursuant to Federal contracting regulations."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to reversions on or after the date of the enactment of this Act.

SEC. 4248. CONTINUATION HEALTH COVERAGE FOR EMPLOYEES OF FAILED FINANCIAL INSTITUTIONS.

(a) ENFORCEMENT OF CONTINUATION OF HEALTH PLAN REQUIREMENTS OF ACQUIRERS OF FAILED DEPOSITORY INSTITUTIONS.—Subsection (f) of section 4980B (relating to continuation of coverage requirements of group health plans) is amended by adding at the end thereof the following new paragraph:

"(9) SPECIAL RULES FOR ACQUIRERS OF FAILED DEPOSITORY INSTITUTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any acquirer of a failed depository institution—

"(i) shall have the same obligation to provide a group health plan meeting the requirements of this subsection with respect to qualified individuals of such institution as the failed depository institution would have had but for its failure, and

"(ii) shall be treated as the employer of such qualified individuals for purposes of this section.

"(B) TAX NOT TO APPLY IF FDIC OR RTC PROVIDE CONTINUATION COVERAGE.—No person shall be subject to any liability under this section by reason of being an acquirer of a failed depository institution if the Federal Deposit Insurance Corporation or the Resolution Trust Corporation elects to relieve such acquirer from its obligations under subparagraph (A). In any such case, the requirements of subparagraph (A) shall apply to the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, as the case may be.

"(C) ACQUIRER.—For purposes of this paragraph, an entity is an acquirer of a failed depository institution during any period if—

"(i) such entity holds substantially all of the assets or liabilities of such institution, and

"(ii)(I) such entity is a bridge bank, or

"(II) such entity acquired such assets or liabilities from the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or a bridge bank.

"(D) FAILED DEPOSITORY INSTITUTION.—For purposes of this section, the term 'failed depository institution' means any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act) for which a receiver or conservator has been appointed.

"(E) QUALIFIED INDIVIDUAL.—For purposes of this section, the term 'qualified individual' means—

"(i) any individual who was, on the day before the date of the appointment of the receiver or conservator, provided coverage under a group health plan of the failed depository institution by reason of the performance of services for such institution, and

"(ii) any individual who was, on such day, a beneficiary under such plan as the spouse or dependent child of the individual described in clause (i)."

(b) TREATMENT OF DEPOSITORY INSTITUTION FAILURES AS QUALIFYING EVENTS FOR RETIREES OF SUCH INSTITUTIONS.—

(1) In general.—Subparagraph (B) of section 4980B(f)(3) is amended—

(A) by striking "The termination" and inserting "(i) The termination",

(B) by striking the period at the end and inserting ", or", and

(C) by inserting after clause (i) the following new clause:

"(ii) the appointment of a receiver or conservator for a failed depository institution from whose employment the covered employee retired at any time."

(2) Conforming amendment.—Subclause (I) of section 4980B(f)(2)(B)(i) is amended by striking "AND REDUCED HOURS" and inserting ", REDUCED HOURS, AND FAILURES OF DEPOSITORY INSTITUTIONS".

(c) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply as if included in section 451 of the Federal Deposit Insurance Corporation Improvement Act of 1991 as of the date of the enactment of such Act.

(2) Liability of FDIC.—In the case of the Federal Deposit Insurance Corporation or any acquirer from such Corporation, the amendments made by this section shall apply only to failed depository institutions for which the receiver or conservator is appointed after the date of the enactment of this Act.

(3) Special rule for coverage under FDIC plan.—Effective as of the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, coverage under the health care continuation plan maintained by the Federal Deposit Insurance Corporation on June 25, 1992, and any other substantially similar plan maintained by such Corporation, shall be deemed to satisfy the obligations of the Federal Deposit Insurance Corporation (and any acquirer from such Corporation) under section 4980B(f) of the Internal Revenue Code of 1986 and section 451 of the Federal Deposit Insurance Corporation Improvement Act of 1991 with respect to qualified individuals of failed depository institutions.

SEC. 4249. DATE FOR ADOPTION OF PLAN AMENDMENTS.

If any amendment made by this Act requires an amendment to any plan, such plan amendment shall not be required to be made before the first day of the first plan year beginning on or after January 1, 1995, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

(2) such plan amendment applies retroactively to such period.

Subtitle C—Treatment of Large Partnerships

PART I—GENERAL PROVISIONS

SEC. 4301. SIMPLIFIED FLOW-THROUGH FOR LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subchapter K (relating to partners and partnerships) is amended by adding at the end thereof the following new part:

"PART IV—SPECIAL RULES FOR LARGE PARTNERSHIPS

"Sec. 771. Application of subchapter to large partnerships.
"Sec. 772. Simplified flow-through.
"Sec. 773. Computations at partnership level.
"Sec. 774. Other modifications.
"Sec. 775. Large partnership defined.
"Sec. 776. Special rules for partnerships holding oil and gas properties.
"Sec. 777. Regulations.

"SEC. 771. APPLICATION OF SUBCHAPTER TO LARGE PARTNERSHIPS.

"The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to a large partnership and its partners.

"SEC. 772. SIMPLIFIED FLOW-THROUGH.

"(a) GENERAL RULE.—In determining the income tax of a partner of a large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

"(1) taxable income or loss from passive loss limitation activities,

"(2) taxable income or loss from other activities,

"(3) net capital gain (or net capital loss)—

"(A) to the extent allocable to passive loss limitation activities, and

"(B) to the extent allocable to other activities,

"(4) tax-exempt interest,

"(5) applicable net AMT adjustment separately computed for—

"(A) passive loss limitation activities, and

"(B) other activities,

"(6) general credits,

"(7) low-income housing credit determined under section 42,

"(8) rehabilitation credit determined under section 47,

"(9) foreign income taxes, and

"(10) the credit allowable under section 29.

"(b) SEPARATE COMPUTATIONS.—In determining the amounts required under subsection (a) to be separately taken into account by any partner, this section and section 773 shall be applied separately with respect to such partner by taking into account such partner's distributive share of the items of income, gain, loss, deduction, or credit of the partnership.

"(c) TREATMENT AT PARTNER LEVEL.—

"(1) IN GENERAL.—Except as provided in this subsection, rules similar to the rules of section 702(b) shall apply to any partner's distributive share of the amounts referred to in subsection (a).

"(2) INCOME OR LOSS FROM PASSIVE LOSS LIMITATION ACTIVITIES.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(1) shall be treated as an item of income or loss (as the case may be) from the conduct of a trade or business which is a single passive activity (as defined in section 469). A similar rule shall apply to a partner's distributive share of amounts referred to in paragraphs (3)(A) and (5)(A) of subsection (a).

"(3) INCOME OR LOSS FROM OTHER ACTIVITIES.—

"(A) IN GENERAL.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(2) shall be treated as an item of income or expense (as the case may be) with respect to property held for investment.

"(B) DEDUCTIONS FOR LOSS NOT SUBJECT TO SECTION 67.—The deduction under section 212 for any loss described in subparagraph (A) shall not be treated as a miscellaneous itemized deduction for purposes of section 67.

"(4) TREATMENT OF NET CAPITAL GAIN OR LOSS.—For purposes of this chapter, any partner's distributive share of any gain or loss described in subsection (a)(3) shall be treated as a long-term capital gain or loss, as the case may be.

"(5) MINIMUM TAX TREATMENT.—In determining the alternative minimum taxable income of any partner, such partner's distributive share of any applicable net AMT adjustment shall be taken into account in lieu of making the separate adjustments provided in sections 56, 57, and 58 with respect to the items of the partnership. Except as provided in regulations, the applicable net AMT adjustment shall be treated, for purposes of section 53, as an adjustment or item of tax preference not specified in section 53(d)(1)(B)(ii).

"(6) GENERAL CREDITS.—A partner's distributive share of the amount referred to in paragraph (6) of subsection (a) shall be taken into account as a current year business credit.

"(d) OPERATING RULES.—For purposes of this section—

"(1) PASSIVE LOSS LIMITATION ACTIVITY.—The term 'passive loss limitation activity' means—

"(A) any activity which involves the conduct of a trade or business, and

"(B) any rental activity.

For purposes of the preceding sentence, the term 'trade or business' includes any activity treated as a trade or business under paragraph (5) or (6) of section 469(c).

"(2) TAX-EXEMPT INTEREST.—The term 'tax-exempt interest' means interest excludable from gross income under section 103.

"(3) APPLICABLE NET AMT ADJUSTMENT.—

"(A) IN GENERAL.—The applicable net AMT adjustment is—

"(i) with respect to taxpayers other than corporations, the net adjustment determined by using the adjustments applicable to individuals, and

"(ii) with respect to corporations, the net adjustment determined by using the adjustments applicable to corporations.

"(B) NET ADJUSTMENT.—The term 'net adjustment' means the net adjustment in the items attributable to passive loss activities or other activities (as the case may be) which would result if such items were determined with the adjustments of sections 56, 57, and 58.

"(4) TREATMENT OF CAPITAL GAINS AND LOSSES.—

"(A) EXCLUSION FOR CERTAIN PURPOSES.—In determining the amounts referred to in paragraphs (1) and (2) of subsection (a), any net capital gain or net capital loss (as the case may be) shall be excluded.

"(B) ALLOCATION RULES.—The net capital gain shall be treated—

"(i) as allocable to passive loss limitation activities to the extent the net capital gain does not exceed the net capital gain determined by only taking into account gains and losses from sales and exchanges of property used in connection with such activities, and

"(ii) as allocable to other activities to the extent such gain exceeds the amount allocated under clause (i).

A similar rule shall apply for purposes of allocating any net capital loss.

"(C) NET CAPITAL LOSS.—The term 'net capital loss' means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchange of capital assets.

"(5) GENERAL CREDITS.—The term 'general credits' means any credit other than the low-income housing credit, the rehabilitation credit, the foreign tax credit, and the credit allowable under section 29.

"(6) FOREIGN INCOME TAXES.—The term 'foreign income taxes' means taxes described in section 901 which are paid or accrued to foreign countries and to possessions of the United States.

"(e) SPECIAL RULE FOR UNRELATED BUSINESS TAX.—In the case of a partner which is an organization subject to tax under section 511, such partner's distributive share of any items shall be taken into account separately to the extent necessary to comply with the provisions of section 512(c)(1).

"(f) SPECIAL RULES FOR APPLYING PASSIVE LOSS LIMITATIONS.—If any person holds an interest in a large partnership other than as a limited partner—

"(1) paragraph (2) of subsection (c) shall not apply to such partner, and

"(2) such partner's distributive share of the partnership items allocable to passive loss limitation activities shall be taken into account separately to the extent necessary to comply with the provisions of section 469.

The preceding sentence shall not apply to any items allocable to an interest held as a limited partner.

"SEC. 773. COMPUTATIONS AT PARTNERSHIP LEVEL.

"(a) GENERAL RULE.—

"(1) TAXABLE INCOME.—The taxable income of a large partnership shall be computed in the same manner as in the case of an individual except that—

"(A) the items described in section 772(a) shall be separately stated, and

"(B) the modifications of subsection (b) shall apply.

"(2) ELECTIONS.—All elections affecting the computation of the taxable income of a large partnership or the computation of any credit of a large partnership shall be made by the partnership; except that the election under section 901 shall be made by each partner separately.

"(3) LIMITATIONS, ETC.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), all limitations and other provisions affecting the computation of the taxable income of a large partnership or the computation of any credit of a large partnership shall be applied at the partnership level (and not at the partner level).

"(B) CERTAIN LIMITATIONS APPLIED AT PARTNER LEVEL.—The following provisions shall be applied at the partner level (and not at the partnership level):

"(i) Section 68 (relating to overall limitation on itemized deductions).

"(ii) Sections 49 and 465 (relating to at risk limitations).

"(iii) Section 469 (relating to limitation on passive activity losses and credits).

"(iv) Any other provision specified in regulations.

"(4) COORDINATION WITH OTHER PROVISIONS.—Paragraphs (2) and (3) shall apply notwithstanding any other provision of this chapter other than this part.

"(b) MODIFICATIONS TO DETERMINATION OF TAXABLE INCOME.—In determining the taxable income of a large partnership—

"(1) CERTAIN DEDUCTIONS NOT ALLOWED.—The following deductions shall not be allowed:

"(A) The deduction for personal exemptions provided in section 151.

"(B) The net operating loss deduction provided in section 172.

"(C) The additional itemized deductions for individuals provided in part VII of subchapter B (other than section 212 thereof).

"(2) CHARITABLE DEDUCTIONS.—In determining the amount allowable under section 170, the limitation of section 170(b)(2) shall apply.

"(3) COORDINATION WITH SECTION 67.—In lieu of applying section 67, 70 percent of the amount of the miscellaneous itemized deductions shall be disallowed.

"(c) SPECIAL RULES FOR INCOME FROM DISCHARGE OF INDEBTEDNESS.—If a large partnership has income from the discharge of any indebtedness—

"(1) such income shall be excluded in determining the amounts referred to in section 772(a), and

"(2) in determining the income tax of any partner of such partnership—

"(A) such income shall be treated as an item required to be separately taken into account under section 772(a), and

"(B) the provisions of section 108 shall be applied without regard to this part.

"SEC. 774. OTHER MODIFICATIONS.

"(a) TREATMENT OF CERTAIN OPTIONAL ADJUSTMENTS, ETC.—In the case of a large partnership—

"(1) computations under section 773 shall be made without regard to any adjustment under section 743(b) or 108(b), but

"(2) a partner's distributive share of any amount referred to in section 772(a) shall be appropriately adjusted to take into account any adjustment under section 743(b) or 108(b) with respect to such partner.

"(b) DEFERRED SALE TREATMENT OF CONTRIBUTED PROPERTY.—

"(1) TREATMENT OF PARTNERSHIP.—In the case of any contribution of property to which this subsection applies—

"(A) the basis of such property to the partnership shall be its fair market value as of the time of such contribution,

"(B) section 704(c) shall not apply to such property, and

"(C) section 737 shall not apply.

"(2) TREATMENT OF CONTRIBUTING PARTNER.—

"(A) IN GENERAL.—In the case of any partner who makes a contribution of property to which this subsection applies—

"(i) such partner shall recognize the precontribution gain or loss from such property as provided in this paragraph, and

"(ii) appropriate adjustments to the basis of such partner's interest in the partnership shall be made for the amounts recognized under this paragraph.

"(B) CHARACTER.—The character of any gain or loss recognized under this paragraph shall be determined by reference to the character which would have resulted if the property had been sold to the partnership at the time of the contributions; except that any gain or loss recognized under subparagraph (C)(i) shall be treated as ordinary income or loss, as the case may be.

"(C) TRANSACTIONS AT PARTNERSHIP LEVEL.—

"(i) DEPRECIATION, ETC.—If any partnership deduction for depreciation, depletion, or amortization is increased by reason of an increase in the basis of any property under paragraph (1), the contributing partner shall recognize so much of the precontribution gain with respect to such property as does not exceed the increase in such deduction. If there is a precontribution

loss, a similar rule shall apply to any decrease in such a deduction.

"(ii) DISPOSITIONS.—

"(I) IN GENERAL.—Except as otherwise provided in this clause, any precontribution gain or loss with respect to any property (to the extent not previously taken into account under this paragraph) shall be recognized by the contributing partner if the partnership makes any disposition of the property.

"(II) DISTRIBUTIONS TO CONTRIBUTING PARTNER.—No gain or loss shall be recognized under subclause (I) by reason of any distribution of the contributed property to the contributing partner (and subparagraph (D)(ii) shall not apply to any such distribution). In any such case, no adjustment shall be made under section 734 on account of such distribution and the adjusted basis of such property in the hands of the contributing partner shall be its adjusted basis immediately before the contribution properly adjusted for gain or loss previously recognized under this paragraph. If the property distributed consists of an interest in an entity, this subclause shall not apply to the extent that the value of such interest is attributable to property contributed to such entity after such interest had been contributed to the partnership.

"(iii) YEAR FOR WHICH AMOUNT TAKEN INTO ACCOUNT.—Any amount recognized under this subparagraph shall be taken into account for the partner's taxable year in which or with which ends the partnership taxable year of the deduction or disposition.

"(D) TRANSACTIONS AT PARTNER LEVEL.—

"(i) IN GENERAL.—If the contributing partner makes a disposition of any portion of his interest in the partnership, a corresponding portion of any precontribution gain or loss which was not previously taken into account under this paragraph shall be recognized for the partner's taxable year in which the disposition occurs. The preceding sentence shall not apply to a disposition at death.

"(ii) TREATMENT OF CERTAIN DISTRIBUTIONS.—If—

"(I) the amount of cash and the fair market value of property distributed to a partner, exceeds

"(II) the adjusted basis of such partner's interest in the partnership immediately before the distribution (determined without regard to any adjustment under subparagraph (A)(ii) resulting from such distribution),

the contributing partner shall recognize so much of any precontribution gain as does not exceed such excess.

"(iii) SPECIAL RULE.—Except as provided in clause (ii)(II), any basis adjustment under subparagraph (A)(ii) resulting from any gain or loss recognized under

this subparagraph shall be treated as occurring immediately before the disposition or distribution involved.

"(E) SECTION 267 AND 707(b) PRINCIPLES TO APPLY.—No loss shall be recognized under subparagraph (C)(ii) or (D) by reason of any disposition (directly or indirectly) to a person related (within the meaning of section 267(b) or 707(b)(1)) to the contributing partner.

"(F) TREATMENT OF CERTAIN NONTAXABLE EXCHANGES.—

"(i) SECTION 1031 AND 1033 TRANSACTIONS.—If the disposition referred to in subclause (I) of subparagraph (C)(ii) is an exchange described in section 1031 or a compulsory or involuntary conversion within the meaning of section 1033—

"(I) the amount of gain or loss recognized by the contributing partner under such subclause (I) shall not exceed the gain or loss recognized by the partnership on the disposition, and

"(II) the replacement property shall be treated as the contributed property for purposes of this paragraph.

For purposes of the preceding sentence, the term 'replacement property' means the property the basis of which is determined under section 1031(d) or 1033(b), whichever is applicable.

"(ii) CONTRIBUTIONS TO CONTROLLED PARTNERSHIP.—If the disposition referred to in subclause (I) of subparagraph (C)(ii) is a contribution of the property to another partnership which is a controlled partnership—

"(I) the rules of subclause (I) of clause (i) shall apply, and

"(II) the partnership shall be treated as continuing to hold the contributed property so long as the other partnership continues to be a controlled partnership and continues to hold such property.

For purposes of the preceding sentence, the term 'controlled partnership' means any partnership in which the partnership making the disposition owns more than 50 percent of the capital interest or profits interest.

"(3) PRECONTRIBUTION GAIN OR LOSS.—For purposes of this subsection—

"(A) PRECONTRIBUTION GAIN.—The term 'precontribution gain' means the excess (if any) of—

"(i) the fair market value of the contributed property as of the time of the contribution, over

"(ii) the adjusted basis of such property immediately before such contribution.

"(B) PRECONTRIBUTION LOSS.—The term 'precontribution loss' means the excess (if any) of the amount referred to in clause (ii) of subparagraph (A) over the amount referred to in clause (i) of subparagraph (A).

"(4) CONTRIBUTIONS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any contribution of property (other than cash) which is made by any partner to a partnership if—

"(A) as of the time of such contribution, such partnership is a large partnership, or

"(B) such contribution is to a partnership reasonably expected to become a large partnership.

This subsection shall not apply to any contribution made before the date of the enactment of this part.

"(c) CREDIT RECAPTURE DETERMINED AT PARTNERSHIP LEVEL.—

"(1) IN GENERAL.—In the case of a large partnership—

"(A) any credit recapture shall be taken into account by the partnership, and

"(B) the amount of such recapture shall be determined as if the credit with respect to which the recapture is made had been fully utilized to reduce tax.

"(2) METHOD OF TAKING RECAPTURE INTO ACCOUNT.—A large partnership shall take into account a credit recapture by reducing the amount of the appropriate current year credit to the extent thereof, and if such recapture exceeds the amount of such current year credit, the partnership shall be liable to pay such excess.

"(3) DISPOSITIONS NOT TO TRIGGER RECAPTURE.—No credit recapture shall be required by reason of any transfer of an interest in a large partnership.

"(4) CREDIT RECAPTURE.—For purposes of this subsection, the term 'credit recapture' means any increase in tax under section 42(j) or 50(a).

"(d) PARTNERSHIP NOT TERMINATED BY REASON OF CHANGE IN OWNERSHIP.—Subparagraph (B) of section 708(b)(1) shall not apply to a large partnership.

"(e) PARTNERSHIP ENTITLED TO CERTAIN CREDITS.—The following shall be allowed to a large partnership and shall not be taken into account by the partners of such partnership:

"(1) The credit provided by section 34.

"(2) Any credit or refund under section 852(b)(3)(D).

"(f) TREATMENT OF REMIC RESIDUALS.—For purposes of applying section 860E(e)(6) to any large partnership—

"(1) all interests in such partnership shall be treated as held by disqualified organizations,

"(2) in lieu of applying subparagraph (C) of section 860E(e)(6), the amount subject to tax under section 860E(e)(6) shall be excluded from the gross income of such partnership, and

"(3) subparagraph (D) of section 860E(e)(6) shall not apply.

"(g) SPECIAL RULES FOR APPLYING CERTAIN INSTALLMENT SALE RULES.—In the case of a large partnership—

"(1) the provisions of sections 453(l)(3) and 453A shall be applied at the partnership level, and

"(2) in determining the amount of interest payable under such sections, such partnership shall be treated as subject to tax under this chapter at the highest rate of tax in effect under section 1 or 11.

"SEC. 775. LARGE PARTNERSHIP.

"(a) GENERAL RULE.—For purposes of this part—

"(1) IN GENERAL.—Except as otherwise provided in this section or section 776, the term 'large partnership' means, with respect to any partnership taxable year, any partnership if the number of persons who were partners in such partnership in such taxable year or any preceding partnership taxable year ending on or after December 31, 1993, equaled or exceeded 250. To the extent provided in regulations, a partnership shall cease to be treated as a large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

"(2) ELECTION FOR PARTNERSHIPS WITH AT LEAST 100 PARTNERS.—If a partnership makes an election under this paragraph, paragraph (1) shall be applied by substituting '100' for '250'. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(b) SPECIAL RULES FOR CERTAIN SERVICE PARTNERSHIPS.—

"(1) CERTAIN PARTNERS NOT COUNTED.—For purposes of this section, the term 'partner' does not include any individual performing substantial services in connection with the activities of the partnership and holding an interest in such partnership, or an individual who formerly performed substantial services in connection with such activities and who held an interest in such partnership at the time the individual performed such services.

"(2) EXCLUSION.—For purposes of this part, the term 'large partnership' does not include any partnership if substantially all the partners of such partnership—

"(A) are individuals performing substantial services in connection with the activities of such partnership or are personal service corporations (as defined in section 269A(b)) the owner-employees (as defined in section 269A(b)) of which perform such substantial services,

"(B) are retired partners who had performed such substantial services, or

"(C) are spouses of partners who are performing (or had previously performed) such substantial services.

"(3) SPECIAL RULE FOR LOWER TIER PARTNERSHIPS.—For purposes of this subsection, the activities of a partnership shall include the activities of any other partnership in which the partnership owns directly an interest in the capital and profits of at least 80 percent.

"(c) EXCLUSION OF COMMODITY POOLS.—For purposes of this part, the term 'large partnership' does not include any partnership the principal activity of which is the buying and selling of commodities (not described in section 1221(1)), or options, futures, or forwards with respect to such commodities.

"(d) SECRETARY MAY RELY ON TREATMENT ON RETURN.—If, on the partnership return of any partnership, such partnership is treated as a large partnership, such treatment shall be binding on such partnership and all partners of such partnership but not on the Secretary.

"SEC. 776. SPECIAL RULES FOR PARTNERSHIPS HOLDING OIL AND GAS PROPERTIES.

"(a) EXCEPTION FOR PARTNERSHIPS HOLDING SIGNIFICANT OIL AND GAS PROPERTIES.—

"(1) IN GENERAL.—For purposes of this part, the term 'large partnership' shall not include any partnership if the average percentage of assets (by value) held by such partnership during the taxable year which are oil or gas properties is at least 25 percent. For purposes of the preceding sentence, any interest held by a partnership in another partnership shall be disregarded, except that the partnership shall be treated as holding its proportionate share of the assets of such other partnership.

"(2) ELECTION TO WAIVE EXCEPTION.—Any partnership may elect to have paragraph (1) not apply. Such an election shall apply to the partnership taxable year for which made and all subsequent partnership taxable years unless revoked with the consent of the Secretary.

"(b) SPECIAL RULES WHERE PART APPLIES.—

"(1) COMPUTATION OF PERCENTAGE DEPLETION.—In the case of a large partnership, except as provided in paragraph (2)—

"(A) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,

"(B) such allowance shall be determined without regard to the provisions of section 613A(c) limiting the amount of production for which percentage depletion is allowable and without respect to paragraph (1) of section 613A(d), and

"(C) paragraph (3) of section 705(a) shall not apply.

"(2) TREATMENT OF CERTAIN PARTNERS.—

"(A) IN GENERAL.—In the case of a disqualified person, the treatment under this chapter of such person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property shall be determined without regard to this part. Such person's distributive share of any such items shall be excluded for purposes of making determinations under sections 772 and 773.

"(B) DISQUALIFIED PERSON.—For purposes of subparagraph (A), the term 'disqualified person' means, with respect to any partnership taxable year—

"(i) any person referred to in paragraph (2) or (4) of section 613A(d) for such person's taxable year in which such partnership taxable year ends, and

"(ii) any other person if such person's average daily production of domestic crude oil and natural gas for such person's taxable year in which such partnership taxable year ends exceeds 500 barrels.

"(C) AVERAGE DAILY PRODUCTION.—For purposes of subparagraph (B), a person's average daily production of domestic crude oil and natural gas for any taxable year shall be computed as provided in section 613A(c)(2)—

"(i) by taking into account all production of domestic crude oil and natural gas (including such person's proportionate share of any production of a partnership),

"(ii) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

"(iii) by treating as 1 person all persons treated as 1 taxpayer under section 613A(c)(8) or among whom allocations are required under such section.

"SEC. 777. REGULATIONS.

"The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this part."

(b) CLERICAL AMENDMENT.—The table of parts for subchapter K of chapter 1 is amended by adding at the end thereof the following new item:

"Part IV. Special rules for large partnerships."

SEC. 4302. SIMPLIFIED AUDIT PROCEDURES FOR LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Chapter 63 is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER D—TREATMENT OF LARGE PARTNERSHIPS

"Part I. Treatment of partnership items and adjustments.
"Part II. Partnership level adjustments.
"Part III. Definitions and special rules.

"PART I—TREATMENT OF PARTNERSHIP ITEMS AND ADJUSTMENTS

"Sec. 6240. Application of subchapter.
"Sec. 6241. Partner's return must be consistent with partnership return.
"Sec. 6242. Procedures for taking partnership adjustments into account.

"SEC. 6240. APPLICATION OF SUBCHAPTER.

"(a) GENERAL RULE.—This subchapter shall only apply to large partnerships and partners in such partnerships.

"(b) COORDINATION WITH OTHER PARTNERSHIP AUDIT PROCEDURES.—

"(1) IN GENERAL.—Subchapter C of this chapter shall not apply to any large partnership other than in its capacity as a partner in another partnership which is not a large partnership.

"(2) TREATMENT WHERE PARTNER IN OTHER PARTNERSHIP.—If a large partnership is a partner in another partnership which is not a large partnership—

"(A) subchapter C of this chapter shall apply to items of such large partnership which are partnership items with respect to such other partnership, but

"(B) any adjustment under such subchapter C shall be taken into account in the manner provided by section 6242.

"SEC. 6241. PARTNER'S RETURN MUST BE CONSISTENT WITH PARTNERSHIP RETURN.

"(a) GENERAL RULE.—A partner of any large partnership shall, on the partner's return, treat each partnership item attributable to such partnership in a manner which is consistent with the treatment of such partnership item on the partnership return.

"(b) UNDERPAYMENT DUE TO INCONSISTENT TREATMENT ASSESSED AS MATH ERROR.—Any underpayment of tax by a partner by reason of failing to comply with the requirements of subsection (a) shall be assessed and collected in the same manner as if such underpayment were on account of a mathematical or clerical error appearing on the partner's return. Paragraph (2) of section 6213(b) shall not apply to any assessment of an underpayment referred to in the preceding sentence.

"(c) ADJUSTMENTS NOT TO AFFECT PRIOR YEAR OF PARTNERS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), subsections (a) and (b) shall apply without regard to any adjustment to the partnership item under part II.

"(2) CERTAIN CHANGES IN DISTRIBUTIVE SHARE TAKEN INTO ACCOUNT BY PARTNER.—

"(A) IN GENERAL.—To the extent that any adjustment under part II involves a change under section 704 in a partner's distributive share of the amount of any partnership item shown on the partnership return, such adjustment shall be taken into account in applying this title to such partner for the partner's taxable year for which such item was required to be taken into account.

"(B) COORDINATION WITH DEFICIENCY PROCEDURES.—

"(i) IN GENERAL.—Subchapter B shall not apply to the assessment or collection of any underpayment of tax attributable to an adjustment referred to in subparagraph (A).

"(ii) ADJUSTMENT NOT PRECLUDED.—Notwithstanding any other law or rule of law, nothing in subchapter B (or in any proceeding under subchapter B) shall preclude the assessment or collection of any underpayment of tax (or the allowance of any credit or refund of any overpayment of tax) attributable to an adjustment referred to in subparagraph (A) and such assessment or collection or allowance (or any notice thereof) shall not preclude any notice, proceeding, or determination under subchapter B.

"(C) PERIOD OF LIMITATIONS.—The period for—

"(i) assessing any underpayment of tax, or

"(ii) filing a claim for credit or refund of any overpayment of tax,

attributable to an adjustment referred to in subparagraph (A) shall not expire before the close of the period prescribed by section 6248 for making adjustments with respect to the partnership taxable year involved.

"(D) TIERED STRUCTURES.—If the partner referred to in subparagraph (A) is another partnership or an S corporation, the rules of this paragraph shall also apply to persons holding interests in such partnership or S corporation (as

the case may be); except that, if such partner is a large partnership, the adjustment referred to in subparagraph (A) shall be taken into account in the manner provided by section 6242.

"(d) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

"For addition to tax in case of partner's disregard of requirements of this section, see part II of subchapter A of chapter 68.

"SEC. 6242. PROCEDURES FOR TAKING PARTNERSHIP ADJUSTMENTS INTO ACCOUNT.

"(a) ADJUSTMENTS FLOW THROUGH TO PARTNERS FOR YEAR IN WHICH ADJUSTMENT TAKES EFFECT.—

"(1) IN GENERAL.—If any partnership adjustment with respect to any partnership item takes effect (within the meaning of subsection (d)(2)) during any partnership taxable year and if an election under paragraph (2) does not apply to such adjustment, such adjustment shall be taken into account in determining the amount of such item for the partnership taxable year in which such adjustment takes effect. In applying this title to any person who is (directly or indirectly) a partner in such partnership during such partnership taxable year, such adjustment shall be treated as an item actually arising during such taxable year.

"(2) PARTNERSHIP LIABLE IN CERTAIN CASES.—If—

"(A) a partnership elects under this paragraph to not take an adjustment into account under paragraph (1),

"(B) a partnership does not make such an election but in filing its return for any partnership taxable year fails to take fully into account any partnership adjustment as required under paragraph (1), or

"(C) any partnership adjustment involves a reduction in a credit which exceeds the amount of such credit determined for the partnership taxable year in which the adjustment takes effect,

the partnership shall pay to the Secretary an amount determined by applying the rules of subsection (b)(4) to the adjustments not so taken into account and any excess referred to in subparagraph (C).

"(3) OFFSETTING ADJUSTMENTS TAKEN INTO ACCOUNT.—If a partnership adjustment requires another adjustment in a taxable year after the adjusted year and before the partnership taxable year in which such partnership adjustment takes effect, such other adjustment shall be taken into account under this subsection for the partnership taxable year in which such partnership adjustment takes effect.

"(4) COORDINATION WITH PART II.—Amounts taken into account under this subsection for any partnership taxable year shall continue to be treated as adjustments for the adjusted year for purposes of determining whether such amounts may be readjusted under part II.

"(b) PARTNERSHIP LIABLE FOR INTEREST AND PENALTIES.—

"(1) IN GENERAL.—If a partnership adjustment takes effect during any partnership taxable year and such adjustment re-

sults in an imputed underpayment for the adjusted year, the partnership—

"(A) shall pay to the Secretary interest computed under paragraph (2), and

"(B) shall be liable for any penalty, addition to tax, or additional amount as provided in paragraph (3).

"(2) DETERMINATION OF AMOUNT OF INTEREST.—The interest computed under this paragraph with respect to any partnership adjustment is the interest which would be determined under chapter 67—

"(A) on the imputed underpayment determined under paragraph (4) with respect to such adjustment, or

"(B) for the period beginning on the day after the return due date for the adjusted year and ending on the return due date for the partnership taxable year in which such adjustment takes effect (or, if earlier, in the case of any adjustment to which subsection (a)(2) applies, the date on which the payment under subsection (a)(2) is made).

Proper adjustments in the amount determined under the preceding sentence shall be made for adjustments required for partnership taxable years after the adjusted year and before the year in which the partnership adjustment takes effect by reason of such partnership adjustment.

"(3) PENALTIES.—A partnership shall be liable for any penalty, addition to tax, or additional amount for which it would have been liable if such partnership had been an individual subject to tax under chapter 1 for the adjusted year and the imputed underpayment determined under paragraph (4) were an actual underpayment (or understatement) for such year.

"(4) IMPUTED UNDERPAYMENT.—For purposes of this subsection, the imputed underpayment determined under this paragraph with respect to any partnership adjustment is the underpayment (if any) which would result—

"(A) by netting all adjustments to items of income, gain, loss, or deduction and—

"(i) if such netting results in a net increase in income, by treating such net increase as an underpayment equal to the amount of such net increase multiplied by the highest rate of tax in effect under section 1 or 11 for the adjusted year, or

"(ii) if such netting results in a net decrease in income, by treating such net decrease as an overpayment equal to such net decrease multiplied by such highest rate, and

"(B) by taking adjustments to credits into account as increases or decreases (whichever is appropriate) in the amount of tax.

For purposes of the preceding sentence, any net decrease in a loss shall be treated as an increase in income and a similar rule shall apply to a net increase in a loss.

"(c) ADMINISTRATIVE PROVISIONS.—

"(1) IN GENERAL.—Any payment required by subsection (a)(2) or (b)(1)(A)—

"(A) shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C, and

"(B) shall be paid on or before the return due date for the partnership taxable year in which the partnership adjustment takes effect.

"(2) INTEREST.—For purposes of determining interest, any payment required by subsection (a)(2) or (b)(1)(A) shall be treated as an underpayment of tax.

"(3) PENALTIES.—

"(A) IN GENERAL.—In the case of any failure by any partnership to pay on the date prescribed therefor any amount required by subsection (a)(2) or (b)(1)(A), there is hereby imposed on such partnership a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term 'underpayment' means the excess of any payment required under this section over the amount (if any) paid on or before the date prescribed therefor.

"(B) ACCURACY-RELATED AND FRAUD PENALTIES MADE APPLICABLE.—For purposes of part II of subchapter A of chapter 68, any payment required by subsection (a)(2) shall be treated as an underpayment of tax.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) PARTNERSHIP ADJUSTMENT.—The term 'partnership adjustment' means any adjustment in the amount of any partnership item of a large partnership.

"(2) WHEN ADJUSTMENT TAKES EFFECT.—A partnership adjustment takes effect—

"(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under part II, when such decision becomes final,

"(B) in the case of an adjustment pursuant to any administrative adjustment request under section 6251, when such adjustment is allowed by the Secretary, or

"(C) in any other case, when such adjustment is made.

"(3) ADJUSTED YEAR.—The term 'adjusted year' means the partnership taxable year to which the item being adjusted relates.

"(4) RETURN DUE DATE.—The term 'return due date' means, with respect to any taxable year, the date prescribed for filing the partnership return for such taxable year (determined without regard to extensions).

"(5) ADJUSTMENTS INVOLVING CHANGES IN CHARACTER.—Under regulations, appropriate adjustments in the application of this section shall be made for purposes of taking into account partnership adjustments which involve a change in the character of any item of income, gain, loss, or deduction.

"(e) PAYMENTS NONDEDUCTIBLE.—No deduction shall be allowed under subtitle A for any payment required to be made by a large partnership under this section.

"PART II—PARTNERSHIP LEVEL ADJUSTMENTS

"Subpart A. Adjustments by Secretary.
"Subpart B. Claims for adjustments by partnership.

"Subpart A—Adjustments by Secretary

"Sec. 6245. Secretarial authority.
"Sec. 6246. Restrictions on partnership adjustments.
"Sec. 6247. Judicial review of partnership adjustment.
"Sec. 6248. Period of limitations for making adjustments.

"SEC. 6245. SECRETARIAL AUTHORITY.

"(a) GENERAL RULE.—The Secretary is authorized and directed to make adjustments at the partnership level in any partnership item to the extent necessary to have such item be treated in the manner required.

"(b) NOTICE OF PARTNERSHIP ADJUSTMENT.—

"(1) IN GENERAL.—If the Secretary determines that a partnership adjustment is required, the Secretary is authorized to send notice of such adjustment to the partnership by certified mail or registered mail. Such notice shall be sufficient if mailed to the partnership at its last known address even if the partnership has terminated its existence.

"(2) FURTHER NOTICES RESTRICTED.—If the Secretary mails a notice of a partnership adjustment to any partnership for any partnership taxable year and the partnership files a petition under section 6247 with respect to such notice, in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact, the Secretary shall not mail another such notice to such partnership with respect to such taxable year.

"(3) AUTHORITY TO RESCIND NOTICE WITH PARTNERSHIP CONSENT.—The Secretary may, with the consent of the partnership, rescind any notice of a partnership adjustment mailed to such partnership. Any notice so rescinded shall not be treated as a notice of a partnership adjustment, for purposes of this section, section 6246, and section 6247, and the taxpayer shall have no right to bring a proceeding under section 6247 with respect to such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

"SEC. 6246. RESTRICTIONS ON PARTNERSHIP ADJUSTMENTS.

"(a) GENERAL RULE.—Except as otherwise provided in this chapter, no adjustment to any partnership item may be made (and no levy or proceeding in any court for the collection of any amount resulting from such adjustment may be made, begun or prosecuted) before—

"(1) the close of the 90th day after the day on which a notice of a partnership adjustment was mailed to the partnership, and

"(2) if a petition is filed under section 6247 with respect to such notice, the decision of the court has become final.

"(b) PREMATURE ACTION MAY BE ENJOINED.—Notwithstanding section 7421(a), any action which violates subsection (a) may be en-

joined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action under this subsection unless a timely petition has been filed under section 6247 and then only in respect of the adjustments that are the subject of such petition.

"(c) EXCEPTIONS TO RESTRICTIONS ON ADJUSTMENTS.—

"(1) ADJUSTMENTS ARISING OUT OF MATH OR CLERICAL ERRORS.—

"(A) IN GENERAL.—If the partnership is notified that, on account of a mathematical or clerical error appearing on the partnership return, an adjustment to a partnership item is required, rules similar to the rules of paragraphs (1) and (2) of section 6213(b) shall apply to such adjustment.

"(B) SPECIAL RULE.—If a large partnership is a partner in another large partnership, any adjustment on account of such partnership's failure to comply with the requirements of section 6241(a) with respect to its interest in such other partnership shall be treated as an adjustment referred to in subparagraph (A), except that paragraph (2) of section 6213(b) shall not apply to such adjustment.

"(2) PARTNERSHIP MAY WAIVE RESTRICTIONS.—The partnership shall at any time (whether or not a notice of partnership adjustment has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the making of any partnership adjustment.

"(d) LIMIT WHERE NO PROCEEDING BEGUN.—If no proceeding under section 6247 is begun with respect to any notice of a partnership adjustment during the 90-day period described in subsection (a), the amount for which the partnership is liable under section 6242 (and any increase in any partner's liability for tax under chapter 1 by reason of any adjustment under section 6242(a)) shall not exceed the amount determined in accordance with such notice.

"SEC. 6247. JUDICIAL REVIEW OF PARTNERSHIP ADJUSTMENT.

"(a) GENERAL RULE.—Within 90 days after the date on which a notice of a partnership adjustment is mailed to the partnership with respect to any partnership taxable year, the partnership may file a petition for a readjustment of the partnership items for such taxable year with—

"(1) the Tax Court,

"(2) the district court of the United States for the district in which the partnership's principal place of business is located, or

"(3) the Claims Court.

"(b) JURISDICTIONAL REQUIREMENT FOR BRINGING ACTION IN DISTRICT COURT OR CLAIMS COURT.—

"(1) IN GENERAL.—A readjustment petition under this section may be filed in a district court of the United States or the Claims Court only if the partnership filing the petition deposits with the Secretary, on or before the date the petition is filed, the amount for which the partnership would be liable under section 6242(b) (as of the date of the filing of the petition) if the partnership items were adjusted as provided by the notice of

partnership adjustment. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt to satisfy such requirement and any shortfall of the amount required to be deposited is timely corrected.

"(2) INTEREST PAYABLE.—Any amount deposited under paragraph (1), while deposited, shall not be treated as a payment of tax for purposes of this title (other than chapter 67).

"(c) SCOPE OF JUDICIAL REVIEW.—A court with which a petition is filed in accordance with this section shall have jurisdiction to determine all partnership items of the partnership for the partnership taxable year to which the notice of partnership adjustment relates and the proper allocation of such items among the partners (and the applicability of any penalty, addition to tax, or additional amount for which the partnership may be liable under section 6242(b)).

"(d) DETERMINATION OF COURT REVIEWABLE.—Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

"(e) EFFECT OF DECISION DISMISSING ACTION.—If an action brought under this section is dismissed other than by reason of a rescission under section 6245(b)(3), the decision of the court dismissing the action shall be considered as its decision that the notice of partnership adjustment is correct, and an appropriate order shall be entered in the records of the court.

"SEC. 6248. PERIOD OF LIMITATIONS FOR MAKING ADJUSTMENTS.

"(a) GENERAL RULE.—Except as otherwise provided in this section, no adjustment under this subpart to any partnership item for any partnership taxable year may be made after the date which is 3 years after the later of—

"(1) the date on which the partnership return for such taxable year was filed, or

"(2) the last day for filing such return for such year (determined without regard to extensions).

"(b) EXTENSION BY AGREEMENT.—The period described in subsection (a) (including an extension period under this subsection) may be extended by an agreement entered into by the Secretary and the partnership before the expiration of such period.

"(c) SPECIAL RULE IN CASE OF FRAUD, ETC.—

"(1) FALSE RETURN.—In the case of a false or fraudulent partnership return with intent to evade tax, the adjustment may be made at any time.

"(2) SUBSTANTIAL OMISSION OF INCOME.—If any partnership omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in its return, subsection (a) shall be applied by substituting '6 years' for '3 years'.

"(3) NO RETURN.—In the case of a failure by a partnership to file a return for any taxable year, the adjustment may be made at any time.

"(4) RETURN FILED BY SECRETARY.—For purposes of this section, a return executed by the Secretary under subsection (b) of section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

"(d) SUSPENSION WHEN SECRETARY MAILS NOTICE OF ADJUSTMENT.—If notice of a partnership adjustment with respect to any taxable year is mailed to the partnership, the running of the period specified in subsection (a) (as modified by the other provisions of this section) shall be suspended—

"(1) for the period during which an action may be brought under section 6247 (and, if a petition is filed under section 6247 with respect to such notice, until the decision of the court becomes final), and

"(2) for 1 year thereafter.

"Subpart B—Claims for Adjustments by Partnership

"Sec. 6251. Administrative adjustment requests.
"Sec. 6252. Judicial review where administrative adjustment request is not allowed in full.

"SEC. 6251. ADMINISTRATIVE ADJUSTMENT REQUESTS.

"(a) GENERAL RULE.—A partnership may file a request for an administrative adjustment of partnership items for any partnership taxable year at any time which is—

"(1) within 3 years after the later of—

"(A) the date on which the partnership return for such year is filed, or

"(B) the last day for filing the partnership return for such year (determined without regard to extensions), and

"(2) before the mailing to the partnership of a notice of a partnership adjustment with respect to such taxable year.

"(b) SECRETARIAL ACTION.—If a partnership files an administrative adjustment request under subsection (a), the Secretary may allow any part of the requested adjustments.

"(c) SPECIAL RULE IN CASE OF EXTENSION UNDER SECTION 6248.—If the period described in section 6248(a) is extended pursuant to an agreement under section 6248(b), the period prescribed by subsection (a)(1) shall not expire before the date 6 months after the expiration of the extension under section 6248(b).

"SEC. 6252. JUDICIAL REVIEW WHERE ADMINISTRATIVE ADJUSTMENT REQUEST IS NOT ALLOWED IN FULL.

"(a) IN GENERAL.—If any part of an administrative adjustment request filed under section 6251 is not allowed by the Secretary, the partnership may file a petition for an adjustment with respect to the partnership items to which such part of the request relates with—

"(1) the Tax Court,

"(2) the district court of the United States for the district in which the principal place of business of the partnership is located, or

"(3) the Claims Court.

"(b) PERIOD FOR FILING PETITION.—A petition may be filed under subsection (a) with respect to partnership items for a partnership taxable year only—

"(1) after the expiration of 6 months from the date of filing of the request under section 6251, and

"(2) before the date which is 2 years after the date of such request.

The 2-year period set forth in paragraph (2) shall be extended for such period as may be agreed upon in writing by the partnership and the Secretary.

"(c) COORDINATION WITH SUBPART A.—

"(1) NOTICE OF PARTNERSHIP ADJUSTMENT BEFORE FILING OF PETITION.—No petition may be filed under this section after the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates.

"(2) NOTICE OF PARTNERSHIP ADJUSTMENT AFTER FILING BUT BEFORE HEARING OF PETITION.—If the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates after the filing of a petition under this subsection but before the hearing of such petition, such petition shall be treated as an action brought under section 6247 with respect to such notice, except that subsection (b) of section 6247 shall not apply.

"(3) NOTICE MUST BE BEFORE EXPIRATION OF STATUTE OF LIMITATIONS.—A notice of a partnership adjustment for the partnership taxable year shall be taken into account under paragraphs (1) and (2) only if such notice is mailed before the expiration of the period prescribed by section 6248 for making adjustments to partnership items for such taxable year.

"(d) SCOPE OF JUDICIAL REVIEW.—Except in the case described in paragraph (2) of subsection (c), a court with which a petition is filed in accordance with this section shall have jurisdiction to determine only those partnership items to which the part of the request under section 6251 not allowed by the Secretary relates and those items with respect to which the Secretary asserts adjustments as offsets to the adjustments requested by the partnership.

"(e) DETERMINATION OF COURT REVIEWABLE.—Any determination by a court under this subsection shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

"PART III—DEFINITIONS AND SPECIAL RULES

"Sec. 6255. Definitions and special rules.

"SEC. 6255. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) LARGE PARTNERSHIP.—The term 'large partnership' has the meaning given to such term by section 775 without regard to section 776(a).

"(2) PARTNERSHIP ITEM.—The term 'partnership item' has the meaning given to such term by section 6231(a)(3).

"(b) PARTNERS BOUND BY ACTIONS OF PARTNERSHIP, ETC.—

"(1) DESIGNATION OF PARTNER.—Each large partnership shall designate (in the manner prescribed by the Secretary) a partner (or other person) who shall have the sole authority to act on behalf of such partnership under this subchapter. In any case in which such a designation is not in effect, the Secretary may select any partner as the partner with such authority.

"(2) BINDING EFFECT.—A large partnership and all partners of such partnership shall be bound—

"(A) by actions taken under this subchapter by the partnership, and

"(B) by any decision in a proceeding brought under this subchapter.

"(c) PARTNERSHIPS HAVING PRINCIPAL PLACE OF BUSINESS OUTSIDE THE UNITED STATES.—For purposes of sections 6247 and 6252, a principal place of business located outside the United States shall be treated as located in the District of Columbia.

"(d) TREATMENT WHERE PARTNERSHIP CEASES TO EXIST.—If a partnership ceases to exist before a partnership adjustment under this subchapter takes effect, such adjustment shall be taken into account by the former partners of such partnership under regulations prescribed by the Secretary.

"(e) DATE DECISION BECOMES FINAL.—For purposes of this subchapter, the principles of section 7481(a) shall be applied in determining the date on which a decision of a district court or the Claims Court becomes final.

"(f) PARTNERSHIPS IN CASES UNDER TITLE 11 OF THE UNITED STATES CODE.—The running of any period of limitations provided in this subchapter on making a partnership adjustment (or provided by section 6501 or 6502 on the assessment or collection of any amount required to be paid under section 6242) shall, in a case under title 11 of the United States Code, be suspended during the period during which the Secretary is prohibited by reason of such case from making the adjustment (or assessment or collection) and—

"(1) for adjustment or assessment, 60 days thereafter, and

"(2) for collection, 6 months thereafter.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subchapter, including regulations—

"(1) to prevent abuse through manipulation of the provisions of this subchapter, and

"(2) providing that this subchapter shall not apply to any case described in section 6231(c)(1) (or the regulations prescribed thereunder) where the application of this subchapter to such a case would interfere with the effective and efficient enforcement of this title.

In any case to which this subchapter does not apply by reason of paragraph (2), rules similar to the rules of sections 6229(f) and 6255(f) shall apply."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 63 is amended by adding at the end thereof the following new item:

"SUBCHAPTER D. Treatment of large partnerships."

SEC. 4303. DUE DATE FOR FURNISHING INFORMATION TO PARTNERS OF LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subsection (b) of section 6031 (relating to copies to partners) is amended by adding at the end thereof the following new sentence: "In the case of a large partnership (as defined in sections 775 and 776(a)), such information shall be furnished on or before the first March 15 following the close of such taxable year."

(b) TREATMENT AS INFORMATION RETURN.—Section 6724 is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULE FOR CERTAIN PARTNERSHIP RETURNS.—If any partnership return under section 6031(a) is required under section 6011(e) to be filed on magnetic media or in other machine-readable form, for purposes of this part, each schedule required to be included with such return with respect to each partner shall be treated as a separate information return."

SEC. 4304. RETURNS MAY BE REQUIRED ON MAGNETIC MEDIA.

Paragraph (2) of section 6011(e) (relating to returns on magnetic media) is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply in the case of the partnership return of a large partnership (as defined in sections 775 and 776(a)) or any other partnership with 250 or more partners."

SEC. 4305. TREATMENT OF PARTNERSHIP ITEMS OF INDIVIDUAL RETIREMENT ACCOUNTS.

Subsection (b) of section 6012 is amended by adding at the end thereof the following new paragraph:

"(6) IRA SHARE OF PARTNERSHIP INCOME.—In the case of a trust which is exempt from taxation under section 408(e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership."

SEC. 4306. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part shall apply to partnership taxable years ending on or after December 31, 1993.

(b) SPECIAL RULE FOR SECTION 4304.—In the case of a partnership which is not a large partnership (as defined in sections 775 and 776(a) of the Internal Revenue Code of 1986, as added by this part), the amendment made by section 4304 shall only apply to partnership taxable years ending on or after December 31, 1998.

(c) SPECIAL RULE FOR SECTION 4305.—The amendment made by section 4305 shall apply to taxable years ending on or after October 1, 1992.

PART II—PROVISIONS RELATED TO TEFRA PARTNERSHIP PROCEEDINGS

SEC. 4311. TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.

(a) IN GENERAL.—Subchapter C of chapter 63 is amended by adding at the end thereof the following new section:

"SEC. 6234. DECLARATORY JUDGMENT RELATING TO TREATMENT OF ITEMS OTHER THAN PARTNERSHIP ITEMS WITH RESPECT TO AN OVERSHELTERED RETURN.

"(a) GENERAL RULE.—If—

"(1) a taxpayer files an oversheltered return for a taxable year,

"(2) the Secretary makes a determination with respect to the treatment of items (other than partnership items) of such taxpayer for such taxable year, and

"(3) the adjustments resulting from such determination do not give rise to a deficiency (as defined in section 6211) but would give rise to a deficiency if there were no net loss from partnership items,

the Secretary is authorized to send a notice of adjustment reflecting such determination to the taxpayer by certified or registered mail.

"(b) OVERSHELTERED RETURN.—For purposes of this section, the term 'oversheltered return' means an income tax return which—

"(1) shows no taxable income for the taxable year, and

"(2) shows a net loss from partnership items.

"(c) JUDICIAL REVIEW IN THE TAX COURT.—Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the day on which the notice of adjustment authorized in subsection (a) is mailed to the taxpayer, the taxpayer may file a petition with the Tax Court for redetermination of the adjustments. Upon the filing of such a petition, the Tax Court shall have jurisdiction to make a declaration with respect to all items (other than partnership items and affected items which require partner level determinations as described in section 6230(a)(2)(A)(i)) for the taxable year to which the notice of adjustment relates, in accordance with the principles of section 6214(a). Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(d) FAILURE TO FILE PETITION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (c), the determination of the Secretary set forth in the notice of adjustment that was mailed to the taxpayer shall be deemed to be correct.

"(2) EXCEPTION.—Paragraph (1) shall not apply after the date that the taxpayer—

"(A) files a petition with the Tax Court within the time prescribed in subsection (c) with respect to a subsequent notice of adjustment relating to the same taxable year, or

"(B) files a claim for refund of an overpayment of tax under section 6511 for the taxable year involved.

If a claim for refund is filed by the taxpayer, then solely for purposes of determining (for the taxable year involved) the amount of any computational adjustment in connection with a partnership proceeding under this subchapter (other than under this section) or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), the items that are the subject of the notice of adjustment shall be presumed to have been correctly reported on the taxpayer's return during the pendency of the refund claim (and, if within the time prescribed by section 6532 the taxpayer commences a civil action for refund under section 7422, until the decision in the refund action becomes final).

"(e) LIMITATIONS PERIOD.—

"(1) IN GENERAL.—Any notice to a taxpayer under subsection (a) shall be mailed before the expiration of the period prescribed by section 6501 (relating to the period of limitations on assessment).

"(2) SUSPENSION WHEN SECRETARY MAILS NOTICE OF ADJUSTMENT.—If the Secretary mails a notice of adjustment to the taxpayer for a taxable year, the period of limitations on the making of assessments shall be suspended for the period during which the Secretary is prohibited from making the assessment (and, in any event, if a proceeding in respect of the notice of adjustment is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

"(3) RESTRICTIONS ON ASSESSMENT.—Except as otherwise provided in section 6851, 6852, or 6861, no assessment of a deficiency with respect to any tax imposed by subtitle A attributable to any item (other than a partnership item or any item affected by a partnership item) shall be made—

"(A) until the expiration of the applicable 90-day or 150-day period set forth in subsection (c) for filing a petition with the Tax Court, or

"(B) if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

"(f) FURTHER NOTICES OF ADJUSTMENT RESTRICTED.—If the Secretary mails a notice of adjustment to the taxpayer for a taxable year and the taxpayer files a petition with the Tax Court within the time prescribed in subsection (c), the Secretary may not mail another such notice to the taxpayer with respect to the same taxable year in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

"(g) COORDINATION WITH OTHER PROCEEDINGS UNDER THIS SUBCHAPTER.—

"(1) IN GENERAL.—The treatment of any item that has been determined pursuant to subsection (c) or (d) shall be taken into account in determining the amount of any computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), for the taxable year involved. Notwithstanding any other law or rule of law pertaining to the period of limitations on the making of assessments,

for purposes of the preceding sentence, any adjustment made in accordance with this section shall be taken into account regardless of whether any assessment has been made with respect to such adjustment.

"(2) SPECIAL RULE IN CASE OF COMPUTATIONAL ADJUSTMENT.—In the case of a computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), the provisions of paragraph (1) shall apply only if the computational adjustment is made within the period prescribed by section 6229 for assessing any tax under subtitle A which is attributable to any partnership item or affected item for the taxable year involved.

"(3) CONVERSION TO DEFICIENCY PROCEEDING.—If—

"(A) after the notice referred to in subsection (a) is mailed to a taxpayer for a taxable year but before the expiration of the period for filing a petition with the Tax Court under subsection (c) (or, if a petition is filed with the Tax Court, before the Tax Court makes a declaration for that taxable year), the treatment of any partnership item for the taxable year is finally determined, or any such item ceases to be a partnership item pursuant to section 6231(b), and

"(B) as a result of that final determination or cessation, a deficiency can be determined with respect to the items that are the subject of the notice of adjustment,

the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition filed in respect of the notice shall be treated as an action brought under section 6213.

"(4) FINALLY DETERMINED.—For purposes of this subsection, the treatment of partnership items shall be treated as finally determined if—

"(A) the Secretary enters into a settlement agreement (within the meaning of section 6224) with the taxpayer regarding such items,

"(B) a notice of final partnership administrative adjustment has been issued and—

"(i) no petition has been filed under section 6226 and the time for doing so has expired, or

"(ii) a petition has been filed under section 6226 and the decision of the court has become final, or

"(C) the period within which any tax attributable to such items may be assessed against the taxpayer has expired.

"(h) SPECIAL RULES IF SECRETARY INCORRECTLY DETERMINES APPLICABLE PROCEDURE.—

"(1) SPECIAL RULE IF SECRETARY ERRONEOUSLY MAILS NOTICE OF ADJUSTMENT.—If the Secretary erroneously determines that subchapter B does not apply to a taxable year of a taxpayer and consistent with that determination timely mails a notice of adjustment to the taxpayer pursuant to subsection (a) of this section, the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition that is filed in respect of the notice shall be treated as an action brought under section 6213.

"(2) SPECIAL RULE IF SECRETARY ERRONEOUSLY MAILS NOTICE OF DEFICIENCY.—If the Secretary erroneously determines that subchapter B applies to a taxable year of a taxpayer and consistent with that determination timely mails a notice of deficiency to the taxpayer pursuant to section 6212, the notice of deficiency shall be treated as a notice of adjustment under subsection (a) and any petition that is filed in respect of the notice shall be treated as an action brought under subsection (c)."

(b) TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.—Section 6211 (defining deficiency) is amended by adding at the end thereof the following new subsection:

"(c) COORDINATION WITH SUBCHAPTER C.—In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapter C."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 63 is amended by adding at the end thereof the following new item:

"Sec. 6234. Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4312. PARTNERSHIP RETURN TO BE DETERMINATIVE OF AUDIT PROCEDURES TO BE FOLLOWED.

(a) IN GENERAL.—Section 6231 (relating to definitions and special rules) is amended by adding at the end thereof the following new subsection:

"(g) PARTNERSHIP RETURN TO BE DETERMINATIVE OF WHETHER SUBCHAPTER APPLIES.—

"(1) DETERMINATION THAT SUBCHAPTER APPLIES.—If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter applies to such partnership for such year but such determination is erroneous, then the provisions of this subchapter are hereby extended to such partnership (and its items) for such taxable year and to partners of such partnership.

"(2) DETERMINATION THAT SUBCHAPTER DOES NOT APPLY.—If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter does not apply to such partnership for such year but such determination is erroneous, then the provisions of this subchapter shall not apply to such partnership (and its items) for such taxable year or to partners of such partnership."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4313. PROVISIONS RELATING TO STATUTE OF LIMITATIONS.

(a) SUSPENSION OF STATUTE WHERE UNTIMELY PETITION FILED.—Paragraph (1) of section 6229(d) (relating to suspension where Secretary makes administrative adjustment) is amended by striking all that follows "section 6226" and inserting the following:

"(and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and".

(b) SUSPENSION OF STATUTE DURING BANKRUPTCY PROCEEDING.—Section 6229 is amended by adding at the end thereof the following new subsection:

"(h) SUSPENSION DURING PENDENCY OF BANKRUPTCY PROCEEDING.—If a petition is filed naming a partner as a debtor in a bankruptcy proceeding under title 11 of the United States Code, the running of the period of limitations provided in this section with respect to such partner shall be suspended—

"(1) for the period during which the Secretary is prohibited by reason of such bankruptcy proceeding from making an assessment, and

"(2) for 60 days thereafter."

(c) TAX MATTERS PARTNER IN BANKRUPTCY.—Section 6229(b) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) SPECIAL RULE WITH RESPECT TO DEBTORS IN TITLE 11 CASES.—Notwithstanding any other law or rule of law, if an agreement is entered into under paragraph (1)(B) and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Secretary has been notified of the bankruptcy proceeding in accordance with regulations prescribed by the Secretary."

(d) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) shall apply to partnership taxable years with respect to which the period under section 6229 of the Internal Revenue Code of 1986 for assessing tax has not expired on or before the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to agreements entered into after the date of the enactment of this Act.

SEC. 4314. EXPANSION OF SMALL PARTNERSHIP EXCEPTION.

(a) IN GENERAL.—Clause (i) of section 6231(a)(1)(B) (relating to exception for small partnerships) is amended to read as follows:

"(i) IN GENERAL.—The term 'partnership' shall not include any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4315. EXCLUSION OF PARTIAL SETTLEMENTS FROM 1 YEAR LIMITATION ON ASSESSMENT.

(a) IN GENERAL.—Subsection (f) of section 6229 (relating to items becoming nonpartnership items) is amended—

(1) by striking "(f) ITEMS BECOMING NONPARTNERSHIP ITEMS.—If" and inserting the following:

"(f) SPECIAL RULES.—

"(1) ITEMS BECOMING NONPARTNERSHIP ITEMS.—If",

(2) by moving the text of such subsection 2 ems to the right, and

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

"(2) SPECIAL RULE FOR PARTIAL SETTLEMENT AGREEMENTS.—If a partner enters into a settlement agreement with the Secretary with respect to the treatment of some of the partnership items in dispute for a partnership taxable year but other partnership items for such year remain in dispute, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to settlements entered into after the date of the enactment of this Act.

SEC. 4316. EXTENSION OF TIME FOR FILING A REQUEST FOR ADMINISTRATIVE ADJUSTMENT.

(a) IN GENERAL.—Section 6227 (relating to administrative adjustment requests) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

"(b) SPECIAL RULE IN CASE OF EXTENSION OF PERIOD OF LIMITATIONS UNDER SECTION 6229.—The period prescribed by subsection (a)(1) for filing of a request for an administrative adjustment shall be extended—

"(1) for the period within which an assessment may be made pursuant to an agreement (or any extension thereof) under section 6229(b), and

"(2) for 6 months thereafter."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 4317. AVAILABILITY OF INNOCENT SPOUSE RELIEF IN CONTEXT OF PARTNERSHIP PROCEEDINGS.

(a) IN GENERAL.—Subsection (a) of section 6230 is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE IN CASE OF ASSERTION BY PARTNER'S SPOUSE OF INNOCENT SPOUSE RELIEF.—

"(A) Notwithstanding section 6404(b), if the spouse of a partner asserts that section 6013(e) applies with respect to a liability that is attributable to any adjustment to a partnership item, then such spouse may file with the Secretary within 60 days after the notice of computational adjustment is mailed to the spouse a request for abatement of the assessment specified in such notice. Upon receipt of such re-

quest, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by subchapter B. The period for making any such reassessment shall not expire before the expiration of 60 days after the date of such abatement.

"(B) If the spouse files a petition with the Tax Court pursuant to section 6213 with respect to the request for abatement described in subparagraph (A), the Tax Court shall only have jurisdiction pursuant to this section to determine whether the requirements of section 6013(e) have been satisfied. For purposes of such determination, the treatment of partnership items under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

"(C) Rules similar to the rules contained in subparagraphs (B) and (C) of paragraph (2) shall apply for purposes of this paragraph."

(b) CLAIMS FOR REFUND.—Subsection (c) of section 6230 is amended by adding at the end thereof the following new paragraph:

"(5) RULES FOR SEEKING INNOCENT SPOUSE RELIEF.—

"(A) IN GENERAL.—The spouse of a partner may file a claim for refund on the ground that the Secretary failed to relieve the spouse under section 6013(e) from a liability that is attributable to an adjustment to a partnership item.

"(B) TIME FOR FILING CLAIM.—Any claim under subparagraph (A) shall be filed within 6 months after the day on which the Secretary mails to the spouse the notice of computational adjustment referred to in subsection (a)(3)(A).

"(C) SUIT IF CLAIM NOT ALLOWED.—If the claim under subparagraph (B) is not allowed, the spouse may bring suit with respect to the claim within the period specified in paragraph (3).

"(D) PRIOR DETERMINATIONS ARE BINDING.—For purposes of any claim or suit under this paragraph, the treatment of partnership items under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive."

(c) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 6230(a) is amended by striking "paragraph (2)" and inserting "paragraph (2) or (3)".

(2) Subsection (a) of section 6503 is amended by striking "section 6230(a)(2)(A)" and inserting "paragraph (2)(A) or (3) of section 6230(a)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 4318. DETERMINATION OF PENALTIES AT PARTNERSHIP LEVEL.

(a) IN GENERAL.—Section 6221 (relating to tax treatment determined at partnership level) is amended by striking "item" and in-

serting "item (and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item)".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 6226 is amended—

(A) by striking "relates and" and inserting "relates,", and

(B) by inserting before the period ", and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item".

(2) Clause (i) of section 6230(a)(2)(A) is amended to read as follows:

"(i) affected items which require partner level determinations (other than penalties, additions to tax, and additional amounts that relate to adjustments to partnership items), or".

(3)(A) Subparagraph (A) of section 6230(a)(3), as added by section 4317, is amended by inserting "(including any liability for any penalty, addition to tax, or additional amount relating to such adjustment)" after "partnership item".

(B) Subparagraph (B) of such section is amended by inserting "(and the applicability of any penalties, additions to tax, or additional amounts)" after "partnership items".

(C) Subparagraph (A) of section 6230(c)(5), as added by section 4317, is amended by inserting before the period "(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)".

(D) Subparagraph (D) of section 6230(c)(5), as added by section 4317, is amended by inserting "(and the applicability of any penalties, additions to tax, or additional amounts)" after "partnership items".

(4) Paragraph (1) of section 6230(c) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by adding at the end thereof the following new subparagraph:

"(C) the Secretary erroneously imposed any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item."

(5) So much of subparagraph (A) of section 6230(c)(2) as precedes "shall be filed" is amended to read as follows:

"(A) UNDER PARAGRAPH (1) (A) OR (C).—Any claim under subparagraph (A) or (C) of paragraph (1)".

(6) Paragraph (4) of section 6230(c) is amended by adding at the end thereof the following: "In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive.

Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may apply or to challenge the amount of the computational adjustment."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4319. PROVISIONS RELATING TO COURT JURISDICTION, ETC.

(a) TAX COURT JURISDICTION TO ENJOIN PREMATURE ASSESSMENTS OF DEFICIENCIES ATTRIBUTABLE TO PARTNERSHIP ITEMS.—Subsection (b) of section 6225 is amended by striking "the proper court." and inserting "the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition."

(b) JURISDICTION TO CONSIDER STATUTE OF LIMITATIONS WITH RESPECT TO PARTNERS.—Paragraph (1) of section 6226(d) is amended by adding at the end thereof the following new sentence:

"Notwithstanding subparagraph (B), any person treated under subsection (c) as a party to an action shall be permitted to participate in such action (or file a readjustment petition under subsection (b) or paragraph (2) of this subsection) solely for the purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired with respect to such person, and the court having jurisdiction of such action shall have jurisdiction to consider such assertion."

(c) TAX COURT JURISDICTION TO DETERMINE OVERPAYMENTS ATTRIBUTABLE TO AFFECTED ITEMS.—

(1) Paragraph (6) of section 6230(d) is amended by striking "(or an affected item)".

(2) Paragraph (3) of section 6512(b) is amended by adding at the end thereof the following new sentence:

"In the case of a credit or refund relating to an affected item (within the meaning of section 6231(a)(5)), the preceding sentence shall be applied by substituting the periods under sections 6229 and 6230(d) for the periods under section 6511(b)(2), (c), and (d)."

(d) VENUE ON APPEAL.—

(1) Paragraph (1) of section 7482(b) is amended by striking "or" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", or", and by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of a petition under section 6234(c)—

"(i) the legal residence of the petitioner if the petitioner is not a corporation, and

"(ii) the place or office applicable under subparagraph (B) if the petitioner is a corporation."

(2) The last sentence of section 7482(b) is amended by striking "or 6228(a)" and inserting ", 6228(a), or 6234(c)".

(e) OTHER PROVISIONS.—

(1) Subsection (c) of section 7459 is amended by striking "or section 6228(a)" and inserting ", 6228(a), or 6234(c)".

(2) Subsection (o) of section 6501 is amended by adding at the end thereof the following new paragraph:

"(3) For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4320. TREATMENT OF PREMATURE PETITIONS FILED BY NOTICE PARTNERS OR 5-PERCENT GROUPS.

(a) IN GENERAL.—Subsection (b) of section 6226 (relating to judicial review of final partnership administrative adjustments) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) TREATMENT OF PREMATURE PETITIONS.—If—

"(A) a petition for a readjustment of partnership items for the taxable year involved is filed by a notice partner (or a 5-percent group) during the 90-day period described in subsection (a), and

"(B) no action is brought under paragraph (1) during the 60-day period described therein with respect to such taxable year which is not dismissed,

such petition shall be treated for purposes of paragraph (1) as filed on the last day of such 60-day period."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to petitions filed after the date of the enactment of this Act.

SEC. 4321. BONDS IN CASE OF APPEALS FROM TEFRA PROCEEDING.

(a) IN GENERAL.—Subsection (b) of section 7485 (relating to bonds to stay assessment of collection) is amended—

(1) by inserting "penalties," after "any interest,", and

(2) by striking "aggregate of such deficiencies" and inserting "aggregate liability of the parties to the action".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 4322. SUSPENSION OF INTEREST WHERE DELAY IN COMPUTATIONAL ADJUSTMENT RESULTING FROM TEFRA SETTLEMENTS.

(a) IN GENERAL.—Subsection (c) of section 6601 (relating to interest on underpayment, nonpayment, or extension of time for payment, of tax) is amended by adding at the end thereof the following new sentence: "In the case of a settlement under section 6224(c) which results in the conversion of partnership items to nonpartnership items pursuant to section 6231(b)(1)(C), the preceding sentence shall apply to a computational adjustment resulting from such settlement in the same manner as if such adjustment were a deficiency and such settlement were a waiver referred to in the preceding sentence."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to settlements entered into after the date of the enactment of this Act.

SEC. 4323. SPECIAL RULES FOR ADMINISTRATIVE ADJUSTMENT REQUESTS WITH RESPECT TO BAD DEBTS OR WORTHLESS SECURITIES.

(a) GENERAL RULE.—Section 6227 (relating to administrative adjustment requests) is amended by adding at the end thereof the following new subsection:

"(d) REQUESTS WITH RESPECT TO BAD DEBTS OR WORTHLESS SECURITIES.—In the case of that portion of any request for an administrative adjustment which relates to the deductibility by the partnership under section 166 of a debt as a debt which became worthless, or under section 165(g) of a loss from worthlessness of a security, the period prescribed in subsection (a)(1) shall be 7 years from the last day for filing the partnership return for the year with respect to which such request is made (determined without regard to extensions)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

(2) TRANSITION RULE.—In the case of that portion of any request (filed before the date of the enactment of this Act) for an administrative adjustment which relates to the deductibility of a debt as a debt which became worthless or the deductibility of a loss from the worthlessness of a security—

(A) paragraph (2) of section 6227(a) of the Internal Revenue Cofe of 1986 shall not apply,

(B) the period for filing a petition under section 6228 of the Internal Revenue Code of 1986 with respect to such request shall not expire before June 1, 1993, and

(C) such a petition may be filed without regard to whether there was a notice of the beginning of an administrative proceeding or a final partnership administrative adjustment.

Subtitle D—Foreign Provisions

PART I—SIMPLIFICATION OF TREATMENT OF PASSIVE FOREIGN CORPORATIONS

SEC. 4401. REPEAL OF FOREIGN PERSONAL HOLDING COMPANY RULES AND FOREIGN INVESTMENT COMPANY RULES.

(a) GENERAL RULE.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding companies).

(2) Section 1246 (relating to gain on foreign investment company stock).

(3) Section 1247 (relating to election by foreign investment companies to distribute income currently).

(b) EXEMPTION OF FOREIGN CORPORATIONS FROM ACCUMULATED EARNINGS TAX AND PERSONAL HOLDING COMPANY RULES.—

(1) ACCUMULATED EARNINGS TAX.—Subsection (b) of section 532 (relating to exceptions) is amended—

(A) by striking paragraph (2) and inserting the following:
"(2) a foreign corporation, or",
(B) by striking ", or" at the end of paragraph (3) and inserting a period, and
(C) by striking paragraph (4).
(2) PERSONAL HOLDING COMPANY RULES.—Subsection (c) of section 542 (relating to exceptions) is amended—
(A) by striking paragraph (5) and inserting the following:
"(5) a foreign corporation,",
(B) by striking paragraphs (7) and (10) and by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively,
(C) by inserting "and" at the end of paragraph (7) (as so redesignated), and
(D) by striking "; and" at the end of paragraph (8) (as so redesignated) and inserting a period.
(c) TREATMENT OF CERTAIN SERVICE CONTRACTS UNDER SUBPART F.—
(1) Paragraph (1) of section 954(c) (defining foreign personal holding company income) is amended by adding at the end thereof the following new subparagraph:
"(F) PERSONAL SERVICE CONTRACTS.—
"(i) Amounts received under a contract under which the corporation is to furnish personal services, if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract.
"(ii) Amounts received from the sale or other disposition of such contract.
This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services. For purposes of the preceding sentence, the attribution rules of section 544 shall apply, determined as if any reference to section 543(a)(7) were a reference to this subparagraph."
(2) Clause (iii) of section 904(d)(2)(A) is amended by striking "and" at the end of subclause (III), by striking the period at the end of subclause (IV) and inserting ", and", and by adding at the end thereof the following new subclause:
"(V) any income described in section 954(c)(1)(F) (relating to personal service contracts)."

SEC. 4402. REPLACEMENT FOR PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) GENERAL RULE.—Part VI of subchapter P of chapter 1 (relating to treatment of certain passive foreign investment companies) is amended to read as follows:

"PART VI—TREATMENT OF PASSIVE FOREIGN CORPORATIONS

"Subpart A. Current taxation rules.
"Subpart B. Interest on holdings to which subpart A does not apply.
"Subpart C. General provisions.

"Subpart A—Current Taxation Rules

"Sec. 1291. Stock in certain passive foreign corporations marked to market.
"Sec. 1292. Inclusion of income of certain passive foreign corporations.

"SEC. 1291. STOCK IN CERTAIN PASSIVE FOREIGN CORPORATIONS MARKED TO MARKET.

"(a) GENERAL RULE.—In the case of marketable stock in a passive foreign corporation which is owned (or treated under subsection (g) as owned) by a United States person at the close of any taxable year of such person—

"(1) If the fair market value of such stock as of the close of such taxable year exceeds its adjusted basis, such United States person shall include in gross income for such taxable year an amount equal to the amount of such excess.

"(2) If the adjusted basis of such stock exceeds the fair market value of such stock as of the close of such taxable year, such United States person shall be allowed a deduction for such taxable year equal to the lesser of—

"(A) the amount of such excess, or

"(B) the unreversed inclusions with respect to such stock.

"(b) BASIS ADJUSTMENTS.—

"(1) IN GENERAL.—The adjusted basis of stock in a passive foreign corporation—

"(A) shall be increased by the amount included in the gross income of the United States person under subsection (a)(1) with respect to such stock, and

"(B) shall be decreased by the amount allowed as a deduction to the United States person under subsection (a)(2) with respect to such stock.

"(2) SPECIAL RULE FOR STOCK CONSTRUCTIVELY OWNED.—In the case of stock in a passive foreign corporation which the United States person is treated as owning under subsection (g)—

"(A) the adjustments under paragraph (1) shall apply to such stock in the hands of the person actually holding such stock but only for purposes of determining the subsequent treatment under this chapter of the United States person with respect to such stock, and

"(B) similar adjustments shall be made to the adjusted basis of the property by reason of which the United States person is treated as owning such stock.

"(c) CHARACTER AND SOURCE RULES.—

"(1) ORDINARY TREATMENT.—

"(A) GAIN.—Any amount included in gross income under subsection (a)(1), and any gain on the sale or other disposition of marketable stock in a passive foreign corporation, shall be treated as ordinary income.

"(B) LOSS.—Any—

"(i) amount allowed as a deduction under subsection (a)(2), and

"(ii) loss on the sale or other disposition of marketable stock in a passive foreign corporation to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to such stock,

shall be treated as an ordinary loss. The amount so treated shall be treated as a deduction allowable in computing adjusted gross income.

"(2) SOURCE.—The source of any amount included in gross income under subsection (a)(1) (or allowed as a deduction under subsection (a)(2)) shall be determined in the same manner as if such amount were gain or loss (as the case may be) from the sale of stock in the passive foreign corporation.

"(d) UNREVERSED INCLUSIONS.—For purposes of this section, the term 'unreversed inclusions' means, with respect to any stock in a passive foreign corporation, the excess (if any) of—

"(1) the amount included in gross income of the taxpayer under subsection (a)(1) with respect to such stock for prior taxable years, over

"(2) the amount allowed as a deduction under subsection (a)(2) with respect to such stock for prior taxable years.

The amount referred to in paragraph (1) shall include any amount which would have been included in gross income under subsection (a)(1) with respect to such stock for any prior taxable year but for section 1293.

"(e) COORDINATION WITH SECTION 1292.—This section shall not apply with respect to any stock in a passive foreign corporation—

"(1) which is U.S. controlled,

"(2) which is a qualified electing fund with respect to the United States person for the taxable year, or

"(3) in which the United States person is a 25-percent shareholder.

"(f) TREATMENT OF CONTROLLED FOREIGN CORPORATIONS WHICH ARE SHAREHOLDERS IN PASSIVE FOREIGN CORPORATIONS.—In the case of a foreign corporation which is a controlled foreign corporation (or is treated as a controlled foreign corporation under section 1292) and which owns (or is treated under subsection (g) as owning) stock in a passive foreign corporation—

"(1) this section (other than subsection (c)(2) thereof) shall apply to such foreign corporation in the same manner as if such corporation were a United States person, and

"(2) for purposes of subpart F of part III of subchapter N—

"(A) any amount included in gross income under subsection (a)(1) shall be treated as foreign personal holding company income described in section 954(c)(1)(A), and

"(B) any amount allowed as a deduction under subsection (a)(2) shall be treated as a deduction allocable to foreign personal holding company income so described.

"(g) STOCK OWNED THROUGH CERTAIN FOREIGN ENTITIES.—Except as provided in regulations—

"(1) IN GENERAL.—For purposes of this section, stock owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(2) TREATMENT OF CERTAIN DISPOSITIONS.—In any case in which a United States person is treated as owning stock in a passive foreign corporation by reason of paragraph (1)—

"(A) any disposition by the United States person or by any other person which results in the United States person being treated as no longer owning such stock, and

"(B) any disposition by the person owning such stock, shall be treated as a disposition by the United States person of the stock in the passive foreign corporation.

"(h) COORDINATION WITH SECTION 851(b).—For purposes of paragraphs (2) and (3) of section 851(b), any amount included in gross income under subsection (a) shall be treated as a dividend.

"(i) TRANSITION RULES.—

"(1) INDIVIDUALS BECOMING SUBJECT TO U.S. TAX.—If any individual becomes a United States person in a taxable year beginning after December 31, 1992, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive foreign corporation owned (or treated as owned under subsection (g)) by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day.

"(2) MARKETABLE STOCK HELD BEFORE EFFECTIVE DATE.—

"(A) IN GENERAL.—If any marketable stock in a passive foreign corporation is owned (or treated under subsection (g) as owned) by a United States person on the first day of such person's first taxable year, beginning after December 31, 1992—

"(i) paragraph (2) of section 1294(a) shall apply to such stock as if it became marketable during such first taxable year; except that—

"(I) section 1293 shall not apply to the amount included in gross income under subsection (a) to the extent such amount is attributable to increases in fair market value during such first taxable year, and

"(II) the taxpayer's holding period shall be treated as having ended on the last day of the preceding taxable year for purposes of allocating amounts under section 1293(a)(1)(A), and

"(ii) such person may elect to extend the time for the payment of the applicable section 1293 deferred tax as provided in subparagraph (B).

"(B) ELECTION TO EXTEND TIME FOR PAYMENT.—

"(i) IN GENERAL.—At the election of the taxpayer, the time for the payment of the applicable section 1293 deferred tax shall be extended to the extent and subject to the limitations provided in this subparagraph.

"(ii) TERMINATION OF EXTENSION.—

"(I) DISTRIBUTIONS.—If any distribution is received with respect to any stock to which an extension under clause (i) relates and such distribution would be an excess distribution within the meaning of section 1293 if such section applied to such stock, then the extension under clause (i) for the appropriate portion (as determined under regulations) of the applicable section 1293 deferred tax shall expire on the last day prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which the distribution is received.

"(II) REVERSAL OF INCLUSION.—If an amount is allowable as a deduction under subsection (a)(2) with respect to any stock to which an extension under clause (i) relates and the amount so allowable is allocable to the amount which gave rise to the applicable section 1293 deferred tax, then the extension under clause (i) for the appropriate portion (as determined under regulations) of the applicable section 1293 deferred tax shall expire on the last day prescribed by law (determined without regard to extensions) for filing the return of the tax for the taxable year for which such deduction is allowed.

"(III) DISPOSITIONS, ETC.—If stock in a passive foreign corporation is disposed of during the taxable year, all extensions under clause (i) for payment of the applicable section 1293 deferred tax attributable to such stock which have not expired before the date of such disposition shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which such disposition occurs. To the extent provided in regulations, the preceding sentence shall not apply in the case of a disposition in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the person acquiring such stock in such transaction shall succeed to the treatment under this section of the person making such disposition.

"(iii) OTHER RULES.—

"(I) ELECTION.—The election under clause (i) shall be made not later than the time prescribed by law (including extensions) for filing the return of

tax imposed by this chapter for the first taxable year referred to in subparagraph (A).

"(II) TREATMENT OF LOANS TO SHAREHOLDER.—For purposes of this subparagraph, any loan by a passive foreign corporation (directly or indirectly) to a shareholder of such corporation shall be treated as a distribution to such shareholder.

"(C) CROSS REFERENCE.—

"For provisions providing for interest for the period of the extension under this paragraph, see section 6601.

"(D) APPLICABLE SECTION 1293 DEFERRED TAX.—For purposes of this paragraph, the term 'applicable section 1293 deferred tax' means the deferred tax amount determined under section 1293 with respect to the amount which, but for section 1293, would have been included in gross income for the first taxable year referred to in subparagraph (A). Such term also includes the tax imposed by this chapter for such first taxable year to the extent attributable to the amounts allocated under section 1293(a)(1)(A) to a period described in section 1293(a)(1)(B)(ii).

"(3) SPECIAL RULES FOR REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—If any marketable stock in a passive foreign corporation is owned (or treated under subsection (g) as owned) by a regulated investment company on the first day of such company's first taxable year beginning after December 31, 1992—

"(i) section 1293 shall not apply to such stock with respect to any distribution or disposition during, or amount included in gross income under this section for, such first taxable year, but

"(ii) such company's tax under this chapter for such first taxable year shall be increased by the aggregate amount of interest which would have been determined under section 1293(c)(3) if section 1293 were applied without regard to this subparagraph.

"(B) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

"SEC. 1292. CURRENT INCLUSION OF INCOME OF CERTAIN PASSIVE FOREIGN CORPORATIONS.

"(a) PASSIVE FOREIGN CORPORATIONS WHICH ARE U.S. CONTROLLED.—

"(1) TREATMENT UNDER SUBPART F.—

"(A). IN GENERAL.—If a passive foreign corporation is United States controlled, then for purposes of subpart F of part III of subchapter N—

"(i) such corporation, if not otherwise a controlled foreign corporation, shall be treated as a controlled foreign corporation,

"(ii) the term 'United States shareholder' means, with respect to such corporation, any United States

person who owns (within the meaning of section 958(a)) any stock in such corporation,

"(iii) the entire gross income of such corporation shall, after being reduced under the principles of paragraph (5) of section 954(b), be treated as foreign base company income, and

"(iv) sections 970 and 971 shall not apply.

Except as provided in regulations, the preceding sentence shall also apply for purposes of section 904(d).

"(B) SPECIAL RULES.—If any taxpayer is treated as being a United States shareholder in a controlled foreign corporation solely by reason of this section—

"(i) section 954(b)(4) (relating to exception for certain income subject to high foreign taxes) shall not apply for purposes of determining the amount included in the gross income of such taxpayer under section 951 by reason of being so treated with respect to such corporation, and

"(ii) the amount so included in the gross income of such taxpayer under section 951 with respect to such corporation shall be treated as long-term capital gain to the extent attributable to the net capital gain of such corporation.

"(2) U.S. CONTROLLED.—For purposes of this subpart, a passive foreign corporation is United States controlled if—

"(A) such corporation is a controlled foreign corporation determined without regard to this subsection, or

"(B) at any time during the taxable year more than 50 percent of—

"(i) the total combined voting power of all classes of stock of such corporation entitled to vote, or

"(ii) the total value of the stock of such corporation,

is owned directly or indirectly by 5 or fewer United States persons.

"(3) CONSTRUCTIVE OWNERSHIP RULES FOR PURPOSES OF PARAGRAPH (2)(B).—For purposes of paragraph (2)(B), the attribution rules provided in section 544 shall apply, determined as if any reference to a personal holding company were a reference to a corporation described in paragraph (2)(B) (and any reference to the stock ownership requirement provided in section 542(a)(2) were a reference to the requirement of paragraph (2)(B)); except that—

"(A) subsection (a)(4) of such section shall be applied by substituting 'Paragraphs (1), (2), and (3)' for 'Paragraphs (2) and (3)',

"(B) stock owned by a nonresident alien individual shall not be considered by reason of attribution through family membership as owned by a citizen or resident alien individual who is not the spouse of the nonresident alien individual and who does not otherwise own stock in the foreign corporation (determined after the application of such attribution rules other than attribution through family membership), and

"(C) stock of a corporation owned by any foreign person shall not be considered by reason of attribution through partners as owned by a citizen or resident of the United States who does not otherwise own stock in the foreign corporation (determined after the application of such attribution rules and subparagraph (A), other than attribution through partners).

"(b) TAXPAYERS ELECTING CURRENT INCLUSION AND 25-PERCENT SHAREHOLDERS.—

"(1) IN GENERAL.—If a passive foreign corporation which is not United States controlled is a qualified electing fund with respect to any taxpayer or the taxpayer is a 25-percent shareholder in such corporation, then for purposes of subpart F of part III of subchapter N—

"(A) such passive foreign corporation shall be treated as a controlled foreign corporation with respect to such taxpayer,

"(B) such taxpayer shall be treated as a United States shareholder in such corporation, and

"(C) the modifications of clauses (iii) and (iv) of subsection (a)(1)(A) and of subparagraph (B) of subsection (a)(1) shall apply in determining the amount included under such subpart F in the gross income of such taxpayer (and the character of the amount so included).

For purposes of section 904(d), any amount included in the gross income of the taxpayer under the preceding sentence shall be treated as a dividend from a foreign corporation which is not a controlled foreign corporation.

"(2) QUALIFIED ELECTING FUND.—For purposes of this subpart, the term 'qualified electing fund' means any passive foreign corporation if—

"(A) an election by the taxpayer under paragraph (3) applies to such corporation for the taxable year of the taxpayer, and

"(B) such corporation complies with such requirements as the Secretary may prescribe for purposes of carrying out the purposes of this subpart.

"(3) ELECTION.—

"(A) IN GENERAL.—A taxpayer may make an election under this paragraph with respect to any passive foreign corporation for any taxable year of the taxpayer. Such an election, once made with respect to any corporation, shall apply to all subsequent taxable years of the taxpayer with respect to such corporation unless revoked by the taxpayer with the consent of the Secretary.

"(B) WHEN MADE.—An election under this subsection may be made for any taxable year of the taxpayer at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably be-

lieves that the corporation was not a passive foreign corporation.

"(4) 25-PERCENT SHAREHOLDER.—For purposes of this subpart, the term '25-percent shareholder' means, with respect to any passive foreign corporation, any United States person who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of section 958(b), 25 percent or more (by vote or value) of the stock of such corporation.

"SUBPART B—INTEREST ON HOLDINGS TO WHICH SUBPART A DOES NOT APPLY

"Sec. 1293. Interest on tax deferral.
"Sec. 1294. Definitions and special rules.

"SEC. 1293. INTEREST ON TAX DEFERRAL.

"(a) TREATMENT OF DISTRIBUTIONS AND STOCK DISPOSITIONS.—

"(1) DISTRIBUTIONS.—If a United States person receives an excess distribution in respect of stock to which this section applies, then—

"(A) the amount of the excess distribution shall be allocated ratably to each day in the taxpayer's holding period for the stock,

"(B) with respect to such excess distribution, the taxpayer's gross income for the current year shall include (as ordinary income) only the amounts allocated under subparagraph (A) to—

"(i) the current year, or

"(ii) any period in the taxpayer's holding period before the first day of the first taxable year of the corporation which begins after December 31, 1986, and for which it was a passive foreign corporation, and

"(C) the tax imposed by this chapter for the current year shall be increased by the deferred tax amount (determined under subsection (c)).

"(2) DISPOSITIONS.—If the taxpayer disposes of stock to which this section applies, then the rules of paragraph (1) shall apply to any gain recognized on such disposition in the same manner as if such gain were an excess distribution.

"(3) DEFINITIONS.—For purposes of this subpart—

"(A) HOLDING PERIOD.—The taxpayer's holding period shall be determined under section 1223; except that—

"(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

"(ii) if section 1291 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1291 so applied.

"(B) CURRENT YEAR.—The term 'current year' means the taxable year in which the excess distribution or disposition occurs.

"(b) EXCESS DISTRIBUTION.—

"(1) IN GENERAL.—For purposes of this section, the term 'excess distribution' means any distribution in respect of stock received during any taxable year to the extent such distribution does not exceed its ratable portion of the total excess distribution (if any) for such taxable year.

"(2) TOTAL EXCESS DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'total excess distribution' means the excess (if any) of—

"(i) the amount of the distributions in respect of the stock received by the taxpayer during the taxable year, over

"(ii) 125 percent of the average amount received in respect of such stock by the taxpayer during the 3 preceding taxable years (or, if shorter, the portion of the taxpayer's holding period before the taxable year).

For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).

"(B) NO EXCESS FOR FIRST YEAR.—The total excess distributions with respect to any stock shall be zero for the taxable year in which the taxpayer's holding period in such stock begins.

"(3) ADJUSTMENTS.—Under regulations prescribed by the Secretary—

"(A) determinations under this subsection shall be made on a share-by-share basis, except that shares with the same holding period may be aggregated,

"(B) proper adjustments shall be made for stock splits and stock dividends,

"(C) if the taxpayer does not hold the stock during the entire taxable year, distributions received during such year shall be annualized,

"(D) if the taxpayer's holding period includes periods during which the stock was held by another person, distributions received by such other person shall be taken into account as if received by the taxpayer,

"(E) if the distributions are received in a foreign currency, determinations under this subsection shall be made in such currency and the amount of any excess distribution determined in such currency shall be translated into dollars,

"(F) proper adjustment shall be made for amounts not includible in gross income by reason of section 959(a) or for which a deduction is allowable under section 245(c), and

"(G) if a charitable deduction was allowable under section 642(c) to a trust for any distribution of its income, proper adjustments shall be made for the deduction so allowable to the extent allocable to distributions or gain in respect of stock in a passive foreign corporation.

For purposes of subparagraph (F), any amount not includible in gross income by reason of section 551(d) (as in effect on January

1, 1992) or 1293(c) (as so in effect) shall be treated as an amount not includible in gross income by reason of section 959(a).

"(c) DEFERRED TAX AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'deferred tax amount' means, with respect to any distribution or disposition to which subsection (a) applies, an amount equal to the sum of—

"(A) the aggregate increases in taxes described in paragraph (2), plus

"(B) the aggregate amount of interest (determined in the manner provided under paragraph (3)) on such increases in tax.

Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.

"(2) AGGREGATE INCREASES IN TAXES.—For purposes of paragraph (1)(A), the aggregate increases in taxes shall be determined by multiplying each amount allocated under subsection (a)(1)(A) to any taxable year (other than any taxable year referred to in subsection (a)(1)(B)) by the highest rate of tax in effect for such taxable year under section 1 or 11, whichever applies.

"(3) COMPUTATION OF INTEREST.—

"(A) IN GENERAL.—The amount of interest referred to in paragraph (1)(B) on any increase determined under paragraph (2) for any taxable year shall be determined for the period—

"(i) beginning on the due date for such taxable year, and

"(ii) ending on the due date for the taxable year with or within which the distribution or disposition occurs,

by using the rates and method applicable under section 6621 for underpayments of tax for such period.

"(B) DUE DATE.—For purposes of this subsection, the term 'due date' means the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for the taxable year.

"(C) SPECIAL RULE.—For purposes of determining the amount of interest referred to in paragraph (1)(B), the amount of any increase in tax determined under paragraph (2) shall be determined without regard to any reduction under section 1294(d) for a tax described in paragraph (2)(A)(ii) thereof.

"SEC. 1294. DEFINITIONS AND SPECIAL RULES.

"(a) STOCK TO WHICH SECTION 1293 APPLIES.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, section 1293 shall apply to any stock in a passive foreign corporation unless—

"(A) such stock is marketable stock as of the time of the distribution or disposition involved, or

"(B)(i) with respect to each of such corporation's taxable years for which such corporation was a passive foreign corporation and which began after December 31, 1992, and included any portion of the taxpayer's holding period in such stock—

"(I) such corporation was U.S. controlled (within the meaning of section 1292(a)(2)), or

"(II) such corporation was treated as a controlled foreign corporation under section 1292(b) with respect to the taxpayer, and

"(ii) with respect to each of such corporation's taxable years for which such corporation was a passive foreign corporation and which begin after December 31, 1986, and before January 1, 1993, and included any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part (as in effect on January 1, 1992) with respect to the taxpayer.

"(2) TREATMENT WHERE STOCK BECOMES MARKETABLE.—If any stock in a passive foreign corporation becomes marketable stock after the beginning of the taxpayer's holding period in such stock, and if the requirements of paragraph (1)(B) are not satisfied, section 1293 shall apply to—

"(A) any distributions with respect to, or disposition of, such stock in the taxable year of the taxpayer in which it becomes so marketable, and

"(B) any amount which, but for section 1293, would have been included in gross income under section 1291(a) with respect to such stock for such taxable year in the same manner as if such amount were gain on the disposition of such stock.

"(3) ELECTION TO RECOGNIZE GAIN WHERE COMPANY BECOMES SUBJECT TO CURRENT INCLUSIONS.—

"(A) IN GENERAL.—If—

"(i) a passive foreign corporation first meets the requirements of clause (i) of paragraph (1)(B) with respect to the taxpayer for a taxable year of such taxpayer which begins after December 31, 1992,

"(ii) the taxpayer holds stock in such company on the first day of such taxable year, and

"(iii) the taxpayer establishes to the satisfaction of the Secretary the fair market value of such stock on such first day,

the taxpayer may elect to recognize gain as if he sold such stock on such first day for such fair market value.

"(B) ADDITIONAL ELECTION FOR SHAREHOLDER OF CONTROLLED FOREIGN CORPORATIONS.—

"(i) IN GENERAL.—If—

"(I) a passive foreign corporation first meets the requirements of subclause (I) of paragraph (1)(B)(i) with respect to the taxpayer for a taxable year of such taxpayer which begins after December 31, 1992,

"(II) the taxpayer holds stock in such corporation on the first day of such taxable year, and

"(III) such corporation is a controlled foreign corporation without regard to this part,

the taxpayer may elect to be treated as receiving a dividend on such first day in an amount equal to the portion of the post-1986 earnings and profits of such corporation attributable (under regulations prescribed by the Secretary) to the stock in such corporation held by the taxpayer on such first day. The amount treated as a dividend under the preceding sentence shall be treated as an excess distribution and shall be allocated under section 1293(a)(1)(A) only to days during periods taken into account in determining the post-1986 earnings and profits so attributable.

"(ii) POST-1986 EARNINGS AND PROFITS.—For purposes of clause (i), the term 'post-1986 earnings and profits' means earnings and profits which were accumulated in taxable years of the corporation beginning after December 31, 1986, and during the period or periods the stock was held by the taxpayer while the corporation was a passive foreign corporation.

"(iii) COORDINATION WITH SECTION 959(e).—For purposes of section 959(e), any amount treated as a dividend under this subparagraph shall be treated as included in gross income under section 1248(a).

"(C) ADJUSTMENTS.—In the case of any stock to which subparagraph (A) or (B) applies—

"(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A) or the amount treated as a dividend under subparagraph (B), as the case may be, and

"(ii) the taxpayer's holding period in such stock shall be treated as beginning on the first day referred to in such subparagraph.

"(b) RULES RELATING TO STOCK ACQUIRED FROM A DECEDENT.—

"(1) BASIS.—In the case of stock of a passive foreign corporation acquired by bequest, devise, or inheritance (or by the decedent's estate), notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this paragraph).

"(2) DEDUCTION FOR ESTATE TAX.—If stock in a passive foreign corporation is acquired from a decedent, the taxpayer shall, under regulations prescribed by the Secretary, be allowed (for the taxable year of the sale or exchange) a deduction from gross income equal to that portion of the decedent's estate tax deemed paid which is attributable to the excess of (A) the value at which such stock was taken into account for purposes of determining the value of the decedent's gross estate, over (B) the basis determined under paragraph (1).

"(3) EXCEPTIONS.—This subsection shall not apply to any stock in a passive foreign corporation if—

"(A) section 1293 would not have applied to a disposition of such stock by the decedent immediately before his death, or

"(B) the decedent was a nonresident alien at all times during his holding period in such stock.

"(c) RECOGNITION OF GAIN.—Except as otherwise provided in regulations, in the case of any transfer of stock in a passive foreign company to which section 1293 applies, where (but for this subsection) there is not full recognition of gain, the excess (if any) of—

"(1) the fair market value of such stock, over

"(2) its adjusted basis,

shall be treated as gain from the sale or exchange of such stock and shall be recognized notwithstanding any provision of law. Proper adjustment shall be made to the basis of property for gain recognized under the preceding sentence.

"(d) COORDINATION WITH FOREIGN TAX CREDIT RULES.—

"(1) IN GENERAL.—If there are creditable foreign taxes with respect to any distribution in respect of stock in a passive foreign corporation—

"(A) the amount of such distribution shall be determined for purposes of section 1293 with regard to section 78,

"(B) the excess distribution taxes shall be allocated ratably to each day in the taxpayer's holding period for the stock, and

"(C) to the extent—

"(i) that such excess distribution taxes are allocated to a taxable year referred to in section 1293(a)(1)(B), such taxes shall be taken into account under section 901 for the current year, and

"(ii) that such excess distribution taxes are allocated to any other taxable year, such taxes shall reduce (subject to the principles of section 904 and not below zero) the increase in tax determined under section 1293(c)(2) for such taxable year by reason of such distribution (but such taxes shall not be taken into account under section 901).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) CREDITABLE FOREIGN TAXES.—The term 'creditable foreign taxes' means, with respect to any distribution—

"(i) any foreign taxes deemed paid under section 902 with respect to such distribution, and

"(ii) any withholding tax imposed with respect to such distribution,

but only if the taxpayer chooses the benefits of section 901 and such taxes are creditable under section 901 (determined without regard to paragraph (1)(C)(ii)).

"(B) EXCESS DISTRIBUTION TAXES.—The term 'excess distribution taxes' means, with respect to any distribution, the portion of the creditable foreign taxes with respect to such distribution which is attributable (on a pro rata basis) to the portion of such distribution which is an excess distribution.

"(C) Section 1248 gain.—The rules of this subsection also shall apply in the case of any gain which but for this section would be includible in gross income as a dividend under section 1248.

"(e) Attribution of Ownership.—For purposes of this subpart—

"(1) Attribution to united states persons.—This subsection—

"(A) shall apply to the extent that the effect is to treat stock of a passive foreign corporation as owned by a United States person, and

"(B) except as provided in paragraph (3) or in regulations, shall not apply to treat stock owned (or treated as owned under this subsection) by a United States person as owned by any other person.

"(2) Corporations.—

"(A) In general.—If 50 percent or more in value of the stock of a corporation (other than an S corporation) is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned directly or indirectly by or for such corporation in that proportion which the value of the stock which such person so owns bears to the value of all stock in the corporation.

"(B) 50-percent limitation not to apply in certain cases.—For purposes of determining whether a shareholder of a passive foreign corporation (or whether a United States shareholder of a controlled foreign corporation which is not a passive foreign corporation) is treated as owning stock owned directly or indirectly by or for such corporation, subparagraph (A) shall be applied without regard to the 50-percent limitation contained therein.

"(C) Family and partner attribution for 50-percent limitation.—For purposes of determining whether the 50-percent limitation of subparagraph (A) is met, the constructive ownership rules of section 544(a)(2) shall apply in addition to the other rules of this subsection.

"(3) Partnerships, etc.—Except as provided in regulations, stock owned, directly or indirectly, by or for a partnership, S corporation, estate, or trust shall be considered as being owned proportionately by its partners, shareholders, or beneficiaries (as the case may be).

"(4) Options.—To the extent provided in regulations, if any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

"(5) Successive application.—Stock considered to be owned by a person by reason of the application of paragraph (2), (3), or (4) shall, for purposes of applying such paragraphs, be considered as actually owned by such person.

"(f) Other Special Rules.—For purposes of this subpart—

"(1) Time for determination.—Stock held by a taxpayer shall be treated as stock in a passive foreign corporation if, at

any time during the holding period of the taxpayer with respect to such stock, such corporation (or any predecessor) was a passive foreign corporation. The preceding sentence shall not apply if the taxpayer elects to recognize gain (as of the last day of the last taxable year for which the company was a passive foreign corporation) under rules similar to the rules of subsection (a)(3)(A).

"(2) APPLICATION OF SUBPART WHERE STOCK HELD BY OTHER ENTITY.—Under regulations—

"(A) IN GENERAL.—In any case in which a United States person is treated as owning stock in a passive foreign corporation by reason of subsection (e)—

"(i) any transaction which results in the United States person being treated as no longer owning such stock,

"(ii) any disposition of such stock by the person owning such stock, and

"(iii) any distribution of property in respect of such stock to the person holding such stock,

shall be treated as a disposition by, or distribution to, the United States person with respect to the stock in the passive foreign corporation.

"(B) AMOUNT TREATED IN SAME MANNER AS PREVIOUSLY TAXED INCOME.—Rules similar to the rules of section 959(b) shall apply to any amount described in subparagraph (A) in respect of stock which the taxpayer is treated as owning under subsection (e).

"(C) COORDINATION WITH SECTION 951.—If, but for this subparagraph, an amount would be taken into account under section 1293 by reason of subparagraph (A) and such amount would also be included in the gross income of the taxpayer under section 951, such amount shall only be taken into account under section 1293.

"(3) DISPOSITIONS.—Except as provided in regulations, if a taxpayer uses any stock in a passive foreign corporation as security for a loan, the taxpayer shall be treated as having disposed of such stock.

"SUBPART C—GENERAL PROVISIONS

"Sec. 1296. Passive foreign corporation.
"Sec. 1297. Special rules.

"SEC. 1296. PASSIVE FOREIGN CORPORATION.

"(a) IN GENERAL.—For purposes of this part, except as otherwise provided in this subpart, the term 'passive foreign corporation' means any foreign corporation if—

"(1) 60 percent or more of the gross income of such corporation for the taxable year is passive income,

"(2) the average percentage of assets (by value) held by such corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent, or

"(3) such corporation is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2), either as a management company or as a unit investment trust.
A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.

"(b) PASSIVE INCOME.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'passive income' means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c) without regard to paragraph (3) thereof.

"(2) EXCEPTIONS.—Except as provided in regulations, the term 'passive income' does not include any income—

"(A) derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States (or, to the extent provided in regulations, by any other corporation),

"(B) derived in the active conduct of an insurance business by a corporation which is predominantly engaged in an insurance business and which would be subject to tax under subchapter L if it were a domestic corporation,

"(C) which is interest, a dividend, or a rent or royalty, which is received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable (under regulations prescribed by the Secretary) to income of such related person which is not passive income, or

"(D) any foreign trade income of a FSC.
For purposes of subparagraph (C), the term 'related person' has the meaning given such term by section 954(d)(3) determined by substituting 'foreign corporation' for 'controlled foreign corporation' each place it appears in section 954(d)(3).

"(3) TREATMENT OF INCOME FROM CERTAIN ASSETS.—To the extent that any asset is properly treated as not held for the production of passive income for purposes of subsection (a)(2), all income from such asset shall be treated as income which is not passive income.

"(4) TREATMENT OF CERTAIN MATCHED REPURCHASE TRANSACTIONS.—

"(A) IN GENERAL.—In the case of any foreign corporation engaged in the active conduct of a trade or business as a dealer in securities—

"(i) an amount properly treated as interest income by reason of a qualified matched transaction shall be netted with the amount properly treated as interest expense by reason of such transaction, and any net income resulting from such netting shall be treated as an item of gross interest income, and

"(ii) the offsetting positions which are part of such transaction shall be netted and the net position shall be treated as a single asset.

"(B) QUALIFIED MATCHED TRANSACTION.—For purposes of subparagraph (A) the term 'qualified matched transaction' means a sale and repurchase agreement with respect to a security and an offsetting reverse agreement with respect to the same security, entered into by the foreign corporation in the active conduct of its trade or business of being a dealer in securities, and properly treated as offsetting agreements in a matched book.

"(C) SECURITY.—For purposes of this paragraph, the term 'security' has the meaning given such term by section 1236(c).

"(c) LOOK-THROUGH IN CASE OF 25-PERCENT OWNED CORPORATION.—If a foreign corporation owns (directly or indirectly) at least 25 percent (by value) of the stock of another corporation, for purposes of determining whether such foreign corporation is a passive foreign corporation, such foreign corporation shall be treated as if it—

"(1) held its proportionate share of the assets of such other corporation, and

"(2) received directly its proportionate share of the income of such other corporation.

"SEC. 1297. SPECIAL RULES.

"(a) UNITED STATES PERSON.—For purposes of this part, the term 'United States person' has the meaning given to such term by section 7701(a)(30).

"(b) CONTROLLED FOREIGN CORPORATION.—For purposes of this part, the term 'controlled foreign corporation' has the meaning given such term by section 957(a).

"(c) MARKETABLE STOCK.—For purposes of this part—

"(1) IN GENERAL.—The term 'marketable stock' means—

"(A) any stock which is regularly traded on—

"(i) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

"(ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this part, and

"(B) to the extent provided in regulations, stock in any foreign corporation which is comparable to a regulated investment company and which offers for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value.

"(2) SPECIAL RULE FOR REGULATED INVESTMENT COMPANIES.—In the case of any regulated investment company which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, all stock in a passive foreign corporation which it owns (or is treated under section 1291(g) as owning) shall be treated as marketable stock for purposes of this part. Except as provided in regulations, a similar rule shall apply in the case of any other regulated investment company.

"(d) OTHER SPECIAL RULES.—For purposes of this part—

"(1) CERTAIN CORPORATIONS NOT TREATED AS PASSIVE.—A corporation shall not be treated as a passive foreign corporation for the 1st taxable year such corporation has gross income (hereinafter in this paragraph referred to as the 'start-up year') if—

"(A) no predecessor of such corporation was a passive foreign corporation,

"(B) it is established to the satisfaction of the Secretary that such corporation will not be a passive foreign corporation for either of the 1st 2 taxable years following the start-up year, and

"(C) such corporation is not a passive foreign corporation for either of the 1st 2 taxable years following the start-up year.

"(2) CERTAIN CORPORATIONS CHANGING BUSINESSES.—A corporation shall not be treated as a passive foreign corporation for any taxable year if—

"(A) neither such corporation (nor any predecessor) was a passive foreign corporation for any prior taxable year,

"(B) it is established to the satisfaction of the Secretary that—

"(i) substantially all of the passive income of the corporation for the taxable year is attributable to proceeds from the disposition of 1 or more active trades or businesses, and

"(ii) such corporation will not be a passive foreign corporation for either of the 1st 2 taxable years following the taxable year, and

"(C) such corporation is not a passive foreign corporation for either of such 2 taxable years.

For purposes of section 1296(c), any passive income referred to in subparagraph (B)(i) shall be treated as income which is not passive income and any assets which produce income so described shall be treated as assets producing income other than passive income.

"(3) TREATMENT OF CERTAIN FOREIGN CORPORATIONS OWNING STOCK IN 25-PERCENT OWNED DOMESTIC CORPORATION.—

"(A) IN GENERAL.—If a foreign corporation owns at least 25 percent (by value) of the stock of a domestic corporation, for purposes of determining whether such foreign corporation is a passive foreign corporation, any qualified stock held by such domestic corporation shall be treated as an asset which does not produce passive income (and is not held for the production of passive income) and any amount included in gross income with respect to such stock shall not be treated as passive income.

"(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term 'qualified stock' means any stock in a C corporation which is a domestic corporation and which is not a regulated investment company or real estate investment trust.

"(4) TREATMENT OF CORPORATION WHICH WAS A PFIC.—A corporation shall be treated as a passive foreign corporation for any taxable year beginning before January 1, 1993, if and only

if such corporation was a passive foreign investment company under this part as in effect for such taxable year.

"(5) SEPARATE INTERESTS TREATED AS SEPARATE CORPORATIONS.—Under regulations prescribed by the Secretary, where necessary to carry out the purposes of this part, separate classes of stock (or other interests) in a corporation shall be treated as interests in separate corporations.

"(e) TREATMENT OF CERTAIN LEASED PROPERTY.—For purposes of section 1296(a)(2)—

"(1) IN GENERAL.—Any tangible personal property with respect to which the foreign corporation is the lessee under a lease with a term of at least 12 months shall be treated as an asset actually held by such corporation.

"(2) DETERMINATION OF VALUE.—

"(A) IN GENERAL.—The value of any asset to which paragraph (1) applies shall be the lesser of—

"(i) the fair market value of such property, or

"(ii) the unamortized portion (as determined under regulations prescribed by the Secretary) of the present value of the payments under the lease for the use of such property.

"(B) PRESENT VALUE.—For purposes of subparagraph (A), the present value of payments described in subparagraph (A)(ii) shall be determined in the manner provided in regulations prescribed by the Secretary—

"(i) as of the beginning of the lease term, and

"(ii) except as provided in such regulations, by using a discount rate equal to the applicable Federal rate determined under section 1274(d)—

"(I) by substituting the lease term for the term of the debt instrument, and

"(II) without regard to paragraph (2) or (3) thereof.

"(3) EXCEPTIONS.—This subsection shall not apply in any case where—

"(A) the lessor is a related person (as defined in the last sentence of section 1296(b)(2)) with respect to the foreign corporation, or

"(B) a principal purpose of leasing the property was to avoid the provisions of this part.

"(f) ELECTION BY CERTAIN PASSIVE FOREIGN CORPORATIONS TO BE TREATED AS A DOMESTIC CORPORATION.—

"(1) IN GENERAL.—For purposes of this title, if—

"(A) a passive foreign corporation would qualify as a regulated investment company under part I of subchapter M if such passive foreign corporation were a domestic corporation,

"(B) such passive foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this title on such passive foreign corporation are paid, and

"(C) such passive foreign corporation makes an election to have this paragraph apply and waives all benefits which are granted by the United States under any treaty and to

which such corporation would otherwise be entitled by reason of being a resident of another country,

such corporation shall be treated as a domestic corporation.

"(2) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2), (3), (4)(A), and (5) of section 953(d) shall apply with respect to any corporation making an election under paragraph (1).

"(g) SPECIAL RULES FOR CERTAIN TAXPAYERS.—

"(1) TAX-EXEMPT ORGANIZATIONS.—In the case of any organization exempt from tax under section 501—

"(A) this part shall apply to any stock in a passive foreign corporation owned (or treated as owned under section 1294(e)) by such organization only to the extent that a dividend on such stock would be taken into account in determining the unrelated business taxable income of such organization, and

"(B) to the extent that this part applies to any such stock, this part shall be applied in the same manner as if such organization were not exempt from tax under section 501(a).

"(2) TREATMENT OF STOCK HELD BY POOLED INCOME FUND.—If stock in a passive foreign corporation is owned (or treated as owned under section 1294(e)) by a pooled income fund (as defined in section 642(c)(5)) and no portion of any gain from a disposition of such stock may be allocated to income under the terms of the governing instrument of such fund—

"(A) section 1293 shall not apply to any gain on a disposition of such stock by such fund if (without regard to section 1293) a deduction would be allowable with respect to such gain under section 642(c)(3),

"(B) subpart A shall not apply with respect to such stock, and

"(C) in determining whether section 1293 applies to any distribution in respect of such stock, such stock shall be treated as failing to qualify for the exceptions under section 1294(a)(1).

"(h) INFORMATION FROM SHAREHOLDERS.—Every United States person who owns stock in any passive foreign corporation shall furnish with respect to such corporation such information as the Secretary may prescribe.

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations—

"(1) providing that gross income shall be determined without regard to section 1293 for such purposes as may be specified in such regulations, and

"(2) to prevent avoidance of the provisions of this part through changes in citizenship or residence status."

(b) INSTALLMENT SALES TREATMENT NOT AVAILABLE.—Paragraph (2) of section 453(k) is amended by striking "or" at the end of subparagraph (A), by inserting "or" at the end of subparagraph (B), and by adding at the end thereof the following new subparagraph:

"(C) stock in a passive foreign corporation (as defined in section 1296) if section 1293 applies to such sale,".

(c) TREATMENT OF MARK-TO-MARKET GAIN UNDER SECTION 4982.—

(1) Subsection (e) of section 4982 is amended by adding at the end thereof the following new paragraph:

"(6) TREATMENT OF GAIN RECOGNIZED UNDER SECTION 1291.—For purposes of determining a regulated investment company's ordinary income—

"(A) notwithstanding paragraph (1)(C), section 1291 shall be applied as if such company's taxable year ended on October 31, and

"(B) any ordinary gain or loss from an actual disposition of stock in a passive foreign corporation during the portion of the calendar year after October 31 shall be taken into account in determining such company's ordinary income for the following calendar year.

In the case of a company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31."

(2) Subsection (b) of section 852 is amended by adding at the end thereof the following new paragraph:

"(10) SPECIAL RULE FOR CERTAIN LOSSES ON STOCK IN PASSIVE FOREIGN CORPORATIONS.—To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net reduction in the value of any stock of a passive foreign corporation to which section 1291 applies occurring after October 31 of the taxable year, and any such reduction shall be treated as occurring on the first day of the following taxable year."

(3) Subsection (c) of section 852 is amended by inserting after "October 31 of such year" the following: ", without regard to any net reduction in the value of any stock of a passive foreign corporation to which section 1291 applies occurring after October 31 of such year,".

(d) TREATMENT OF CERTAIN PREVIOUSLY TAXED AMOUNTS.—Subsection (e) of section 959 is amended—

(1) by adding at the end thereof the following new sentence: "A similar rule shall apply in the case of amounts included in gross income under section 1293 (as in effect on January 1, 1992).", and

(2) by striking "AMOUNTS PREVIOUSLY TAXED UNDER SECTION 1248" in the subsection heading and inserting "CERTAIN PREVIOUSLY TAXED AMOUNTS".

SEC. 4403. TECHNICAL AND CONFORMING AMENDMENTS.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 171(c) is amended—

(A) by striking ", or by a foreign personal holding company, as defined in section 552", and

(B) by striking ", or a foreign personal holding company".

(2) Section 312 is amended by striking subsection (j).

(3) Subsection (m) of section 312 is amended by striking ", a foreign investment company (within the meaning of section

1246(b)), or a foreign personal holding company (within the meaning of section 552)" and inserting "or a passive foreign corporation (as defined in section 1296)".

(4) Subsection (e) of section 443 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(5) Clause (ii) of section 465(c)(7)(B) is amended to read as follows:

"(ii) a passive foreign corporation with respect to which the stock ownership requirements of section 1292(a)(2)(B) are met, or".

(6) Subsection (b) of section 535 is amended by striking paragraph (9).

(7) Subsection (d) of section 535 is hereby repealed.

(8) Paragraph (1) of section 543(b) is amended by inserting "and" at the end of subparagraph (A), by striking ", and" at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(9) Paragraph (1) of section 562(b) is amended by striking "or a foreign personal holding company described in section 552".

(10) Section 563 is amended—

(A) by striking subsection (c),

(B) by redesignating subsection (d) as subsection (c), and

(C) by striking "subsection (a), (b), or (c)" in subsection (c) (as so redesignated) and inserting "subsection (a) or (b)".

(11) Paragraph (2) of section 751(d) is amended by striking "subsection (a) of section 1246 (relating to gain on foreign investment company stock)" and inserting "section 1291 (relating to stock in certain passive foreign corporations marked to market)".

(12) Subsection (b) of section 851 is amended by striking the sentence following paragraph (4)(B) which contains a reference to section 1293(a).

(13) Clause (ii) of section 864(b)(2)(A) is amended by striking "(other than" and all that follows down through "holding company)" and inserting "(other than a corporation which would be a personal holding company but for section 542(c)(5) and which is not United States controlled (as defined in section 1292(a)(2))".

(14) Subsection (d) of section 904 is amended by striking paragraphs (2)(A)(ii), (2)(E)(iii), and (3)(I).

(15)(A) Subparagraph (A) of section 904(g)(1) is amended to read as follows:

"(A) Any amount included in gross income under section 951(a) (relating to amounts included in gross income of United States shareholders)."

(B) The paragraph heading of paragraph (2) of section 904(g) is amended by striking "AND FOREIGN PERSONAL HOLDING OR PASSIVE FOREIGN INVESTMENT COMPANY".

(16) Section 951 is amended by striking subsections (c), (d), and (f), and by redesignating subsection (e) as subsection (c).

(17) Paragraph (1) of section 986(c) is amended by striking "or 1293(c)".

(18) Paragraph (3) of section 989(b) is amended by striking ", 551(a), or 1293(a)".

(19) Paragraph (5) of section 1014(b) is hereby repealed.

(20) Subsection (a) of section 1016 is amended by striking paragraph (13) and by redesignating the following paragraphs accordingly.

(21) Paragraph (3) of section 1212(a) is amended—

(A) by striking subparagraph (A),

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively, and

(C) by amending subparagraph (D) to read as follows:

"(C) for which it is a passive foreign corporation."

(22) Section 1223 is amended by striking paragraph (10) and by redesignating the following paragraphs accordingly.

(23) Subsection (d) of section 1248 is amended by striking paragraphs (5) and (7).

(24)(A) Subsection (a) of section 6035 is amended by striking "foreign personal holding company (as defined in section 552)" and inserting "passive foreign corporation with respect to which the stock ownership requirements of section 1292(a)(2)(B) are met".

(B) The section heading for section 6035 is amended by striking "FOREIGN PERSONAL HOLDING COMPANIES" and inserting "CLOSELY HELD PASSIVE FOREIGN CORPORATIONS",.

(C) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking "foreign personal holding companies" in the item relating to section 6035 and inserting 'closely-held passive foreign corporations".

(25) Subparagraph (D) of section 6103(e)(1) is amended by striking clause (iv) and redesignating clauses (v) and (vi) as clauses (iv) and (v), respectively.

(26) Subparagraph (B) of section 6501(e)(1) is amended to read as follows:

"(B) CONSTRUCTIVE DIVIDENDS.—If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed."

(27) Section 4947 and section 4948(c)(4) are each amended by striking "556(b)(2)," each place it appears.

(b) CLERICAL AMENDMENTS.—

(1) The table of parts for subchapter G of chapter 1 is amended by striking the item relating to part III.

(2) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the items relating to sections 1246 and 1247.

(3) The table of parts for subchapter P of chapter 1 is amended by striking the item relating to part VI and inserting the following:

"Part VI. Treatment of passive foreign corporations."

SEC. 4404. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part shall apply to—

(1) taxable years of United States persons beginning after December 31, 1992, and

(2) taxable years of foreign corporations ending with or within such taxable years of United States persons.

(b) DENIAL OF INSTALLMENT SALES TREATMENT.—The amendment made by section 3402(b) shall apply to dispositions after December 31, 1992.

(c) BASIS RULE.—The amendments made by this part shall not affect the determination of the basis of any stock acquired from a decedent in a taxable year beginning before January 1, 1993.

(d) STUDY.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study of the tax treatment for purposes of the rules applicable to passive foreign corporations (as amended by this part) of securities sale and repurchase transactions and securities lending and borrowing transactions.

(2) REPORT.—Not later than the day 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance a report on the study conducted under this subsection, together with such recommendations as he may deem advisable.

PART II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS

SEC. 4411. GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.

(a) GENERAL RULE.—Section 964 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new subsection:

"(f) GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.—

"(1) IN GENERAL.—If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

"(2) SAME COUNTRY EXCEPTION NOT APPLICABLE.—Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

"(3) CLARIFICATION OF DEEMED SALES.—For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of

this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock.".

(b) AMENDMENT OF SECTION 904(d).—Clause (i) of section 904(d)(2)(E) is amended by striking "and except as provided in regulations, the taxpayer was a United States shareholder in such corporation".

(c) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply to gain recognized on transactions occurring after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to distributions after the date of the enactment of this Act

SEC. 4412. AUTHORITY TO PRESCRIBE SIMPLIFIED METHOD FOR APPLYING SECTION 960(b)(2).

(a) GENERAL RULE.—Paragraph (2) of section 960(b) is amended by adding at the end thereof the following new sentence: "The Secretary may prescribe regulations requiring the use of simplified methods set forth in such regulations for determining the amount of the increase referred to in the preceding sentence."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4413. MISCELLANEOUS MODIFICATIONS TO SUBPART F.

(a) SECTION 1248 GAIN TAKEN INTO ACCOUNT IN DETERMINING PRO RATA SHARE.—

(1) IN GENERAL.—Paragraph (2) of section 951(a) (defining pro rata share of subpart F income) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to dispositions after the date of the enactment of this Act.

(b) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—

(1) IN GENERAL.—Section 961 (relating to adjustments to basis of stock in controlled foreign corporations and of other property) is amended by adding at the end thereof the following new subsection:

"(c) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and sub-

ject to such proof of identity of such interest as the Secretary may prescribe by regulations).”

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1992.

(c) DETERMINATION OF PREVIOUSLY TAXED INCOME IN SECTION 304 DISTRIBUTIONS, ETC.—

(1) IN GENERAL.—Section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by adding at the end thereof the following new subsection:

“(f) ADJUSTMENTS FOR CERTAIN TRANSACTIONS.—If by reason of—

“(1) a transaction to which section 304 applies,

“(2) the structure of a United States shareholder's holdings in controlled foreign corporations, or

“(3) other circumstances,

there would be a multiple inclusion of any item in income (or an inclusion or exclusion without an appropriate basis adjustment) by reason of this subpart, the Secretary may prescribe regulations providing such modifications in the application of this subpart as may be necessary to eliminate such multiple inclusion or provide such basis adjustment, as the case may be.”

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(d) CLARIFICATION OF TREATMENT OF BRANCH TAX EXEMPTIONS OR REDUCTIONS.—

(1) IN GENERAL.—Subsection (b) of section 952 is amended by adding at the end thereof the following new sentence: “For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.”

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

SEC. 4414. INDIRECT FOREIGN TAX CREDIT ALLOWED FOR CERTAIN LOWER TIER COMPANIES.

(a) SECTION 902 CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 902 (relating to deemed taxes increased in case of certain 2nd and 3rd tier foreign corporations) is amended to read as follows:

“(b) DEEMED TAXES INCREASED IN CASE OF CERTAIN LOWER TIER CORPORATIONS.—

“(1) IN GENERAL.—If—

“(A) any foreign corporation is a member of a qualified group, and

“(B) such foreign corporation owns 10 percent or more of the voting stock of another member of such group from which it receives dividends in any taxable year,

such foreign corporation shall be deemed to have paid the same proportion of such other member's post-1986 foreign income taxes as would be determined under subsection (a) if such foreign corporation were a domestic corporation.

"(2) QUALIFIED GROUP.—For purposes of paragraph (1), the term 'qualified group' means—

"(A) the foreign corporation described in subsection (a), and

"(B) any other foreign corporation if—

"(i) the domestic corporation owns at least 5 percent of the voting stock of such other foreign corporation indirectly through a chain of foreign corporations connected through stock ownership of at least 10 percent of their voting stock,

"(ii) the foreign corporation described in subsection (a) is the first tier corporation in such chain, and

"(iii) such other corporation is not below the sixth tier in such chain,

The term 'qualified group' shall not include any foreign corporation below the third tier in the chain referred to in clause (i) unless such foreign corporation is a controlled foreign corporation (as defined in section 957) and the domestic corporation is a United States shareholder (as defined in section 951(b)) in such foreign corporation. Paragraph (1) shall apply to those taxes paid by a member of the qualified group below the third tier only with respect to periods during which it was a controlled foreign corporation."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 902(c)(3) is amended by adding "or" at the end of clause (i) and by striking clauses (ii) and (iii) and inserting the following new clause:

"(ii) the requirements of subsection (b)(2) are met with respect to such foreign corporation."

(B) Subparagraph (B) of section 902(c)(4) is amended by striking "3rd foreign corporation" and inserting "sixth tier foreign corporation".

(C) The heading for paragraph (3) of section 902(c) is amended by striking "WHERE DOMESTIC CORPORATION ACQUIRES 10 PERCENT OF FOREIGN CORPORATION" and inserting "WHERE FOREIGN CORPORATION FIRST QUALIFIES".

(D) Paragraph (3) of section 902(c) is amended by striking "ownership" each place it appears.

(b) SECTION 960 CREDIT.—Paragraph (1) of section 960(a) (relating to special rules for foreign tax credits) is amended to read as follows:

"(1) DEEMED PAID CREDIT.—For purposes of subpart A of this part, if there is included under section 951(a) in the gross income of a domestic corporation any amount attributable to earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, then, except to the extent provided in regulations, section 902 shall be applied as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B))."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of

such corporations beginning after the date of enactment of this Act.

(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction.

SEC. 4415. STUDY ON INVESTMENTS BY CONTROLLED FOREIGN CORPORATION IN UNITED STATES PROPERTY.

(a) GENERAL RULE.—The Secretary of the Treasury shall conduct a study on tax treatment of investments by controlled foreign corporations in obligations of United States persons other than corporations. Such study shall include the Secretary's views as to whether the treatment of such investments should be changed, along with a discussion of the merits and consequences of any such change.

(b) REPORT.—Not later than December 31, 1992, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance a report on the study conducted under this subsection, together with such recommendations as he may deem advisable.

PART III—OTHER PROVISIONS

SEC. 4421. EXCHANGE RATE USED IN TRANSLATING FOREIGN TAXES.

(a) ACCRUED TAXES TRANSLATED BY USING AVERAGE RATE FOR YEAR TO WHICH TAXES RELATE.—

(1) IN GENERAL.—Subsection (a) of section 986 (relating to translation of foreign taxes) is amended to read as follows:

"(a) FOREIGN INCOME TAXES.—

"(1) TRANSLATION OF ACCRUED TAXES.—

"(A) IN GENERAL.—For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

"(B) EXCEPTION FOR TAXES NOT PAID WITHIN FOLLOWING 2 YEARS.—

"(i) Subparagraph (A) shall not apply to any foreign income taxes paid after the date 2 years after the close of the taxable year to which such taxes relate.

"(ii) Subparagraph (A) shall not apply to taxes paid before the beginning of the taxable year to which such taxes relate.

"(C) EXCEPTION FOR INFLATIONARY CURRENCIES.—To the extent provided in regulations, subparagraph (A) shall not apply to any foreign income taxes the liability for

which is denominated in any currency determined to be an inflationary currency under such regulations.

"(D) CROSS REFERENCE.—

"For adjustments where tax is not paid within 2 years, see section 905(c).

"(2) TRANSLATION OF TAXES TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of determining the amount of the foreign tax credit, in the case of any foreign income taxes to which subparagraph (A) of paragraph (1) does not apply—

"(A) such taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

"(B) any adjustment to the amount of such taxes shall be translated into dollars using—

"(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

"(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of the original payment of such foreign income taxes.

"(3) FOREIGN INCOME TAXES.—For purposes of this subsection, the term 'foreign income taxes' means any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States."

(2) ADJUSTMENT WHEN NOT PAID WITHIN 2 YEARS AFTER YEAR TO WHICH TAXES RELATE.—Subsection (c) of section 905 is amended to read as follows:

"(c) ADJUSTMENTS TO ACCRUED TAXES.—

"(1) IN GENERAL.—If—

"(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

"(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

"(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.

"(2) SPECIAL RULE FOR TAXES NOT PAID WITHIN 2 YEARS.—In making the redetermination under paragraph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1). Any such taxes if subsequently paid shall be taken into account for the taxable year in which paid and no redetermination under this section shall be made on account of such payment.

"(3) ADJUSTMENTS.—The amount of tax due on any redetermination under paragraph (1) (if any) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

"(4) BOND REQUIREMENTS.—In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and ap-

proved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.

"(5) OTHER SPECIAL RULES.—In any redetermination under paragraph (1) by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, or deduction under section 164, shall be allowed for any taxable year with respect to any such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period."

(b) AUTHORITY TO USE AVERAGE RATES.—

(1) IN GENERAL.—Subsection (a) of section 986 (relating to foreign taxes) is amended by adding at the end thereof the following new paragraph:

"(3) AUTHORITY TO PERMIT USE OF AVERAGE RATES.—To the extent prescribed in regulations, the average exchange rate for the period (specified in such regulations) during which the taxes or adjustment is paid may be used instead of the exchange rate as of the time of such payment."

(2) DETERMINATION OF AVERAGE RATES.—Subsection (c) of section 989 is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(6) setting forth procedures for determining the average exchange rate for any period."

(3) CONFORMING AMENDMENTS.—Subsection (b) of section 989 is amended by striking "weighted" each place it appears.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a)(1) and (b) shall apply to taxes paid or accrued in taxable years beginning after December 31, 1991.

(2) SUBSECTION (a)(2).—The amendment made by subsection (a)(2) shall apply to taxes which relate to taxable years beginning after December 31, 1991.

SEC. 4422. ELECTION TO USE SIMPLIFIED SECTION 904 LIMITATION FOR ALTERNATIVE MINIMUM TAX.

(a) GENERAL RULE.—Subsection (a) of section 59 (relating to alternative minimum tax foreign tax credit) is amended by adding at the end thereof the following new paragraph:

"(3) ELECTION TO USE SIMPLIFIED SECTION 904 LIMITATION.—

"(A) IN GENERAL.—In determining the alternative minimum tax foreign tax credit for any taxable year to which an election under this paragraph applies—

"(i) subparagraph (B) of paragraph (1) shall not apply, and

"(ii) the limitation of section 904 shall be based on the proportion which—

"(I) the taxpayer's taxable income (as determined for purposes of the regular tax) from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income), bears to

"(II) the taxpayer's entire alternative minimum taxable income for the taxable year.

"(B) ELECTION.—

"(i) IN GENERAL.—An election under this paragraph may be made only for the taxpayer's first taxable year which begins after December 31, 1992, and for which the taxpayer claims an alternative minimum tax foreign tax credit.

"(ii) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under this paragraph, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 4423. MODIFICATION OF SECTION 1491.

(a) GENERAL RULE.—So much of chapter 5 (relating to tax on transfers to avoid income tax) as precedes section 1492 is amended to read as follows:

"CHAPTER 5—TREATMENT OF TRANSFERS TO AVOID INCOME TAX

"Sec. 1491. Recognition of gain.
"Sec. 1492. Exceptions.

"SEC. 1491. RECOGNITION OF GAIN.

"In the case of any transfer of property by a United States person to a foreign corporation as paid-in surplus or as a contribution to capital, to a foreign estate or trust, or to a foreign partnership, for purposes of this subtitle, such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

"(1) the fair market value of the property so transferred, over

"(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor."

(b) CONFORMING AMENDMENTS.—

(1) Section 1057 is hereby repealed.

(2) Section 1492 is amended to read as follows:

"SEC. 1492. EXCEPTIONS.

"The provisions of section 1491 shall not apply—

"(1) If the transferee is an organization exempt from income tax under part I of subchapter F of chapter 1 (other than an organization described in section 401(a)),

"(2) To a transfer described in section 367, or

"(3) To any other transfer, to the extent provided in regulations in accordance with principles similar to the principles of section 367 or otherwise consistent with the purpose of section 1491."

(3) Section 1494 is hereby repealed.

(4) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1057.

(5) The table of chapters for subtitle A is amended by striking "Tax on" in the item relating to chapter 5 and inserting "Treatment of".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

SEC. 4424. MODIFICATION OF SECTION 367(b).

(a) GENERAL RULE.—Paragraph (1) of section 367(b) is amended to read as follows:

"(1) IN GENERAL.—In the case of any transaction described in section 332, 351, 354, 355, 356, or 361 in which the status of a foreign corporation as a corporation is a general condition for nonrecognition by 1 or more of the parties to the transaction, income shall be required to be recognized to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. This subsection shall not apply to a transaction in which the foreign corporation is not treated as a corporation under subsection (a)(1)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transfers after December 31, 1993.

Subtitle E—Treatment of Intangibles

SEC. 4501. AMORTIZATION OF GOODWILL AND CERTAIN OTHER INTANGIBLES.

(a) GENERAL RULE.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 197. AMORTIZATION OF GOODWILL AND CERTAIN OTHER INTANGIBLES.

"(a) GENERAL RULE.—A taxpayer shall be entitled to an amortization deduction with respect to any amortizable section 197 intangible. The amount of such deduction shall be determined by amortizing the adjusted basis (for purposes of determining gain) of such intangible ratably over the 14-year period beginning with the month in which such intangible was acquired.

"(b) NO OTHER DEPRECIATION OR AMORTIZATION DEDUCTION ALLOWABLE.—Except as provided in subsection (a), no depreciation

or amortization deduction shall be allowable with respect to any amortizable section 197 intangible.

"(c) AMORTIZABLE SECTION 197 INTANGIBLE.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this section, the term 'amortizable section 197 intangible' means any section 197 intangible—

"(A) which is acquired by the taxpayer after the date of the enactment of this section, and

"(B) which is held in connection with the conduct of a trade or business or an activity described in section 212.

"(2) EXCLUSION OF SELF-CREATED INTANGIBLES, ETC.—The term 'amortizable section 197 intangible' shall not include any section 197 intangible—

"(A) which is not described in subparagraph (D), (E), or (F) of subsection (d)(1), and

"(B) which is created by the taxpayer.

This paragraph shall not apply if the intangible is created in connection with a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

"(3) ANTI-CHURNING RULES.—

"For exclusion of intangibles acquired in certain transactions, see subsection (f)(9).

"(d) SECTION 197 INTANGIBLE.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this section, the term 'section 197 intangible' means—

"(A) goodwill,

"(B) going concern value,

"(C) any of the following intangible items:

"(i) workforce in place including its composition and terms and conditions (contractual or otherwise) of its employment,

"(ii) business books and records, operating systems, or any other information base (including lists or other information with respect to current or prospective customers),

"(iii) any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item,

"(iv) any customer-based intangible,

"(v) any supplier-based intangible, and

"(vi) any other similar item,

"(D) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof,

"(E) any covenant not to compete (or other arrangement to the extent such arrangement has substantially the same effect as a covenant not to compete) entered into in connection with an acquisition (directly or indirectly) of an interest in a trade or business or substantial portion thereof, and

"(F) any franchise, trademark, or trade name.

"(2) CUSTOMER-BASED INTANGIBLE.—

"(A) In general.—The term 'customer-based intangible' means—

"(i) composition of market,

"(ii) market share, and

"(iii) any other value resulting from future provision of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with customers.

"(B) Special rule for financial institutions.—In the case of a financial institution, the term 'customer-based intangible' includes deposit base and similar items.

"(3) Supplier-based intangible.—The term 'supplier-based intangible' means any value resulting from future acquisitions of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer.

"(e) Exceptions.—For purposes of this section, the term 'section 197 intangible' shall not include any of the following:

"(1) Financial interests.—Any interest—

"(A) in a corporation, partnership, trust, or estate, or

"(B) under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract.

"(2) Land.—Any interest in land.

"(3) Computer software.—

"(A) In general.—Any—

"(i) computer software which is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified, and

"(ii) other computer software which is not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

"(B) Computer software defined.—For purposes of subparagraph (A), the term 'computer software' means any program designed to cause a computer to perform a desired function. Such term shall not include any data base or similar item unless the data base or item is in the public domain and is incidental to the operation of otherwise qualifying computer software.

"(4) Certain interests or rights acquired separately.—Any of the following not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade business or substantial portion thereof:

"(A) Any interest in a film, sound recording, video tape, book, or similar property.

"(B) Any right to receive tangible property or services under a contract or granted by a governmental unit or agency or instrumentality thereof.

"(C) Any interest in a patent or copyright.

"(D) To the extent provided in regulations, any right under a contract (or granted by a governmental unit or an agency or instrumentality thereof) if such right—

"(i) has a fixed duration of less than 14 years, or

"(ii) is fixed as to amount and, without regard to this section, would be recoverable under a method similar to the unit-of-production method.

"(5) INTERESTS UNDER LEASES AND DEBT INSTRUMENTS.—Any interest under—

"(A) an existing lease of tangible property, or

"(B) except as provided in subsection (d)(2)(B), any existing indebtedness.

"(6) TREATMENT OF SPORTS FRANCHISES.—A franchise to engage in professional football, basketball, baseball, or other professional sport, and any item acquired in connection with such a franchise.

"(7) CERTAIN TRANSACTION COSTS.—Any fees for professional services, and any transaction costs, incurred by parties to a transaction with respect to which any portion of the gain or loss is not recognized under part III of subchapter C.

"(f) SPECIAL RULES.—

"(1) TREATMENT OF CERTAIN DISPOSITIONS, ETC.—If there is a disposition of any amortizable section 197 intangible acquired in a transaction or series of related transactions (or any such intangible becomes worthless) and one or more other amortizable section 197 intangibles acquired in such transaction or series of related transactions are retained—

"(A) no loss shall be recognized by reason of such disposition (or such worthlessness), and

"(B) appropriate adjustments to the adjusted bases of such retained intangibles shall be made for any loss not recognized under subparagraph (A).

All persons treated as a single taxpayer under section 41(f)(1) shall be so treated for purposes of the preceding sentence.

"(2) TREATMENT OF CERTAIN TRANSFERS.—

"(A) IN GENERAL.—In the case of any section 197 intangible transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of applying this section with respect to so much of the adjusted basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor.

"(B) TRANSACTIONS COVERED.—The transactions described in this subparagraph are—

"(i) any transaction described in section 332, 351, 361, 721, 731, 1031, or 1033, and

"(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

"(3) TREATMENT OF AMOUNTS PAID PURSUANT TO COVENANTS NOT TO COMPETE, ETC.—Any amount paid or incurred pursuant to a covenant or arrangement referred to in subsection (d)(1)(E) shall be treated as an amount chargeable to capital account.

"(4) TREATMENT OF FRANCHISES, ETC.—

"(A) FRANCHISE.—The term 'franchise' has the meaning given to such term by section 1253(b)(1).

"(B) TREATMENT OF RENEWALS.—Any renewal of a franchise, trademark, or trade name (or of a license, a permit, or other right referred to in subsection (d)(1)(D)) shall be treated as an acquisition. The preceding sentence shall only apply with respect to costs incurred in connection with such renewal.

"(C) CERTAIN AMOUNTS NOT TAKEN INTO ACCOUNT.—Any amount to which section 1253(d)(1) applies shall not be taken into account under this section.

"(5) TREATMENT OF CERTAIN REINSURANCE TRANSACTIONS.—In the case of any amortizable section 197 intangible resulting from an assumption reinsurance transaction, the amount taken into account as the adjusted basis of such intangible under this section shall be the excess of—

"(A) the amount paid or incurred by the acquirer under the assumption reinsurance transaction, over

"(B) the amount required to be capitalized under section 848 in connection with such transaction.

Subsection (b) shall not apply to any amount required to be capitalized under section 848.

"(6) TREATMENT OF CERTAIN SUBLEASES.—For purposes of this section, a sublease shall be treated in the same manner as a lease of the underlying property involved.

"(7) TREATMENT AS DEPRECIABLE.—For purposes of this chapter, any amortizable section 197 intangible shall be treated as property which is of a character subject to the allowance for depreciation provided in section 167.

"(8) TREATMENT OF CERTAIN INCREMENTS IN VALUE.—This section shall not apply to any increment in value if, without regard to this section, such increment is properly taken into account in determining the cost of property which is not a section 197 intangible.

"(9) ANTI-CHURNING RULES.—For purposes of this section—

"(A) IN GENERAL.—The term 'amortizable section 197 intangible' shall not include any section 197 intangible which is described in subparagraph (A) or (B) of subsection (d)(1) (or for which depreciation or amortization would not have been allowable but for this section) and which is acquired by the taxpayer after the date of the enactment of this section, if—

"(i) the intangible was held or used at any time on or after July 25, 1991, and on or before such date of enactment by the taxpayer or a related person,

"(ii) the intangible was acquired from a person who held such intangible at any time on or after July 25, 1991, and on or before such date of enactment, and, as part of the transaction, the user of such intangible does not change, or

"(iii) the taxpayer grants the right to use such intangible to a person (or a person related to such person) who held or used such intangible at any time on or after July 25, 1991, and on or before such date of enactment.

For purposes of this subparagraph, the determination of whether the user of property changes as part of a transaction shall be determined in accordance with regulations prescribed by the Secretary. For purposes of this subparagraph, deductions allowable under section 1253(d) shall be treated as deductions allowable for amortization.

"(B) EXCEPTION WHERE GAIN RECOGNIZED.—If—

"(i) subparagraph (A) would not apply to an intangible acquired by the taxpayer but for the last sentence of subparagraph (C)(i), and

"(ii) the person from whom the taxpayer acquired the intangible elects, notwithstanding any other provision of this title—

"(I) to recognize gain on the disposition of the intangible, and

"(II) to pay a tax on such gain which, when added to any other income tax on such gain under this title, equals such gain multiplied by the highest rate of income tax applicable to such person under this title,

then subparagraph (A) shall apply to the intangible only to the extent that the taxpayer's adjusted basis in the intangible exceeds the gain recognized under clause (ii)(I).

"(C) RELATED PERSON DEFINED.—For purposes of this paragraph—

"(i) RELATED PERSON.—A person (hereinafter in this paragraph referred to as the 'related person') is related to any person if—

"(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

"(II) the related person and such person are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)).

For purposes of subclause (I), in applying section 267(b) or 707(b)(1), '20 percent' shall be substituted for '50 percent'.

"(ii) TIME FOR MAKING DETERMINATION.—A person shall be treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

"(D) ACQUISITIONS BY REASON OF DEATH.—Subparagraph (A) shall not apply to the acquisition of any property by the taxpayer if the basis of the property in the hands of the taxpayer is determined under section 1014(a).

"(E) SPECIAL RULE FOR PARTNERSHIPS.—With respect to any increase in the basis of partnership property under section 732, 734, or 743, determinations under this paragraph shall be made at the partner level and each partner shall be treated as having owned and used such partner's proportionate share of the partnership assets.

"(F) ANTI-ABUSE RULES.—The term 'amortizable section 197 intangible' does not include any section 197 intangible acquired in a transaction, one of the principal purposes of which is to avoid the requirement of subsection (c)(1) that the intangible be acquired after the date of the enactment of this section or to avoid the provisions of subparagraph (A).

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including such regulations as may be appropriate to prevent avoidance of the purposes of this section through related persons or otherwise."

(b) MODIFICATIONS TO DEPRECIATION RULES.—

(1) TREATMENT OF CERTAIN PROPERTY EXCLUDED FROM SECTION 197.—Section 167 (relating to depreciation deduction) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) TREATMENT OF CERTAIN PROPERTY EXCLUDED FROM SECTION 197.—

"(1) COMPUTER SOFTWARE.—

"(A) IN GENERAL.—If a depreciation deduction is allowable under subsection (a) with respect to any computer software, such deduction shall be computed by using the straight line method and a useful life of 36 months.

"(B) COMPUTER SOFTWARE.—For purposes of this section, the term 'computer software' has the meaning given to such term by section 197(e)(3)(B); except that such term shall not include any such software which is an amortizable section 197 intangible.

"(2) CERTAIN INTERESTS OR RIGHTS ACQUIRED SEPARATELY.—If a depreciation deduction is allowable under subsection (a) with respect to any property described in subparagraph (B), (C), or (D) of section 197(e)(4), such deduction shall be computed in accordance with regulations prescribed by the Secretary."

(2) ALLOCATION OF BASIS IN CASE OF LEASED PROPERTY.—Subsection (c) of section 167 is amended to read as follows:

"(c) BASIS FOR DEPRECIATION.—

"(1) IN GENERAL.—The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011, for the purpose of determining the gain on the sale or other disposition of such property.

"(2) SPECIAL RULE FOR PROPERTY SUBJECT TO LEASE.—If any property is acquired subject to a lease—

"(A) no portion of the adjusted basis shall be allocated to the leasehold interest, and

"(B) the entire adjusted basis shall be taken into account in determining the depreciation deduction (if any) with respect to the property subject to the lease."

(c) AMENDMENTS TO SECTION 1253.—Subsection (d) of section 1253 is amended by striking paragraphs (2), (3), (4), and (5) and inserting the following:

"(2) OTHER PAYMENTS.—Any amount paid or incurred on account of a transfer, sale, or other disposition of a franchise,

trademark, or trade name to which paragraph (1) does not apply shall be treated as an amount chargeable to capital account.

"(3) RENEWALS, ETC.—For purposes of determining the term of a transfer agreement under this section, there shall be taken into account all renewal options (and any other period for which the parties reasonably expect the agreement to be renewed)."

(d) AMENDMENT TO SECTION 848.—Subsection (g) of section 848 is amended by striking "this section" and inserting "this section or section 197".

(e) AMENDMENTS TO SECTION 1060.—

(1) Paragraph (1) of section 1060(b) is amended by striking "goodwill or going concern value" and inserting "section 197 intangibles".

(2) Paragraph (1) of section 1060(d) is amended by striking "goodwill or going concern value (or similar items)" and inserting "section 197 intangibles".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (g) of section 167 (as redesignated by subsection (b)) is amended to read as follows:

"(g) CROSS REFERENCE.—

"(1) For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

"(2) For amortization of goodwill and certain other intangibles, see section 197."

(2) Subsection (f) of section 642 is amended by striking "section 169" and inserting "sections 169 and 197".

(3) Subsection (a) of section 1016 is amended by striking paragraph (19) and by redesignating the following paragraphs accordingly.

(4) Subparagraph (C) of section 1245(a)(2) is amended by striking "193, or 1253(d) (2) or (3)" and inserting "or 193".

(5) Paragraph (3) of section 1245(a) is amended by striking "section 185 or 1253(d) (2) or (3)".

(6) The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 197. Amortization of goodwill and certain other intangibles."

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to property acquired after the date of the enactment of this Act.

(2) ELECTION TO HAVE AMENDMENTS APPLY TO PROPERTY ACQUIRED AFTER JULY 25, 1991.—

(A) IN GENERAL.—If an election under this paragraph applies to the taxpayer—

(i) the amendments made by this section shall apply to property acquired by the taxpayer after July 25, 1991,

(ii) subsection (c)(1)(A) of section 197 of the Internal Revenue Code of 1986 (as added by this section) (and so much of subsection (f)(9)(A) of such section 197 as precedes clause (i) thereof) shall be applied with respect to the taxpayer by treating July 25, 1991, as the date of the enactment of such section, and

(iii) in applying subsection (f)(9) of such section, with respect to any property acquired by the taxpayer on or before the date of the enactment of this Act, only holding or use on July 25, 1991, shall be taken into account.

(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe. Such an election by any taxpayer, once made—

(i) may be revoked only with the consent of the Secretary, and

(ii) shall apply to the taxpayer making such election and any other taxpayer under common control with the taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of such Code) at any time after November 22, 1991, and on or before the date on which such election is made.

(3) ELECTIVE BINDING CONTRACT EXCEPTION.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any acquisition of property by the taxpayer if—

(i) such acquisition is pursuant to a written binding contract in effect on the date of the enactment of this Act and at all times thereafter before such acquisition,

(ii) an election under paragraph (2) does not apply to the taxpayer, and

(iii) the taxpayer makes an election under this paragraph with respect to such contract.

(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made—

(i) may be revoked only with the consent of the Secretary, and

(ii) shall apply to all property acquired pursuant to the contract with respect to which such election was made.

(h) ANNUAL REPORTS.—The Secretary of the Treasury shall submit annual reports to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the implementation and effects of the amendments made by this section, including the effects of such amendments on merger and acquisition activities. The first such annual report shall be submitted on or before December 31, 1994.

(i) ANNUAL REPORTS ON OUTSTANDING CASES.—The Secretary of the Treasury shall submit annual reports to the Committee on Ways and Means of the House of Representatives and the Committee on

Finance of the Senate regarding the volume of cases still outstanding that involve disputes regarding the amortization of intangibles, progress made in resolving such cases, efforts made to coordinate settlement proceedings, and factors inhibiting the resolution of such cases. The report shall also address the impact of the amendments made by this section on the volume of disputes regarding the amortization of intangibles. The first such annual report shall be submitted on or before December 31, 1993.

SEC. 4502. TREATMENT OF CERTAIN PAYMENTS TO RETIRED OR DECEASED PARTNER.

(a) SECTION 736(b) NOT TO APPLY IN CERTAIN CASES.—Subsection (b) of section 736 (relating to payments for interest in partnership) is amended by adding at the end thereof the following new paragraph:

"(3) LIMITATION ON APPLICATION OF PARAGRAPH (2).—Paragraph (2) shall apply only if—

"(A) capital is not a material income-producing factor for the partnership, and

"(B) the retiring or deceased partner was a general partner in the partnership."

(b) LIMITATION ON DEFINITION OF UNREALIZED RECEIVABLES.—

(1) IN GENERAL.—Subsection (c) of section 751 (defining unrealized receivables) is amended—

(A) by striking "sections 731, 736, and 741" each place they appear and inserting ", sections 731 and 741 (but not for purposes of section 736)", and

(B) by striking "section 731, 736, or 741" each place it appears and inserting "section 731 or 741".

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (e) of section 751 is amended by striking "sections 731, 736, and 741" and inserting "sections 731 and 741".

(B) Section 736 is amended by striking subsection (c).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply in the case of partners retiring or dying on or after June 25, 1992.

(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any partner retiring on or after June 25, 1992, if a written contract to purchase such partner's interest in the partnership was binding on June 24, 1992, and at all times thereafter before such purchase.

Subtitle F—Other Income Tax Provisions

PART I—PROVISIONS RELATING TO SUBCHAPTER S CORPORATIONS

SEC. 4601. DETERMINATION OF WHETHER CORPORATION HAS 1 CLASS OF STOCK.

(1) GENERAL RULE.—Paragraph (4) of section 1361(c) is amended to read as follows:

"(4) DETERMINATION OF WHETHER CORPORATION HAS 1 CLASS OF STOCK.—For purposes of subsection (b)(1)(D), a corpora-

tion shall be treated as having 1 class of stock if all outstanding shares of stock of the corporation confer identical rights to distributions and liquidation proceeds. The preceding sentence shall apply whether or not there are differences in voting rights among such shares."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1982.

SEC. 4602. AUTHORITY TO VALIDATE CERTAIN INVALID ELECTIONS.

(a) GENERAL RULE.—Subsection (f) of section 1362 (relating to inadvertent terminations) is amended to read as follows:

"(f) INADVERTENT INVALID ELECTIONS OR TERMINATIONS.—If—

"(1) an election under subsection (a) by any corporation—

"(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

"(B) was terminated under paragraph (2) or (3) of subsection (d),

"(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

"(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

"(A) so that the corporation is a small business corporation, or

"(B) to acquire the required shareholder consents, and

"(4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary."

(b) LATE ELECTIONS.—Subsection (b) of section 1362 is amended by adding at the end thereof the following new paragraph.

"(5) AUTHORITY TO TREAT LATE ELECTIONS AS TIMELY.—If—

"(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year, and

"(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such election as timely made for such taxable year (and paragraph (3) shall not apply)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to elections for taxable years beginning after December 31, 1982.

SEC. 4603. TREATMENT OF DISTRIBUTIONS DURING LOSS YEARS.

(a) ADJUSTMENTS FOR DISTRIBUTIONS TAKEN INTO ACCOUNT BEFORE LOSSES.—

(1) Subparagraph (A) of section 1366(d)(1) is amended by striking "paragraph (1)" and inserting "paragraphs (1) and (2)(A)".

(2) Subsection (d) of section 1368 is amended by adding at the end thereof the following new sentence:

"In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year."

(b) ACCUMULATED ADJUSTMENTS ACCOUNT.—Paragraph (1) of section 1368(e) (relating to accumulated adjustments account) is amended by adding at the end thereof the following new subparagraph:

"(C) NET LOSS FOR YEAR DISREGARDED.—

"(i) IN GENERAL.—In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

"(ii) NET NEGATIVE ADJUSTMENT.—For purposes of clause (i), the term 'net negative adjustment' means, with respect to any taxable year, the excess (if any) of—

"(I) the reductions in the account for the taxable year (other than for distributions), over

"(II) the increases in such account for such taxable year."

(c) CONFORMING AMENDMENTS.—Subparagraph (A) of section 1368(e)(1) is amended—

(1) by striking "as provided in subparagraph (B)" and inserting "as otherwise provided in this paragraph", and

(2) by striking "section 1367(b)(2)(A)" and inserting "section 1367(a)(2)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in taxable years beginning after December 31, 1991.

SEC. 4604. OTHER MODIFICATIONS.

(a) TREATMENT OF S CORPORATIONS UNDER SUBCHAPTER C.—Subsection (a) of section 1371 (relating to application of subchapter C rules) is amended to read as follows:

"(a) APPLICATION OF SUBCHAPTER C RULES.—Except as otherwise provided in this title, and except to the extent inconsistent with this subchapter, subchapter C shall apply to an S corporation and its shareholders."

(b) S CORPORATIONS PERMITTED TO HOLD SUBSIDIARIES.—

(1) IN GENERAL.—Paragraph (2) of section 1361(b) (defining ineligible corporation) is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (c) of section 1361 is amended by striking paragraph (6).

(B) Subsection (b) of section 1504 (defining includible corporation) is amended by adding at the end thereof the following new paragraph:

"(8) An S corporation."

(c) ELIMINATION OF PRE-1983 EARNINGS AND PROFITS.—

(1) IN GENERAL.—If—

(A) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

(B) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1991,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (3) of section 1362(d) is amended—

(i) by striking "subchapter C" in the paragraph heading and inserting "accumulated",

(ii) by striking "subchapter C" in subparagraph (A)(i)(I) and inserting "accumulated", and

(iii) by striking subparagraph (B) and redesignating the following subparagraphs accordingly.

(B)(i) Subsection (a) of section 1375 is amended by striking "subchapter C" in paragraph (1) and inserting "accumulated".

(ii) Paragraph (3) of section 1375(b) is amended to read as follows:

"(3) PASSIVE INVESTMENT INCOME, ETC.—The terms 'passive investment income' and 'gross receipts' have the same respective meanings as when used in paragraph (3) of section 1362(d)."

(iii) The section heading for section 1375 is amended by striking "SUBCHAPTER C" and inserting "ACCUMULATED".

(iv) The table of sections for part III of subchapter S of chapter 1 is amended by striking "subchapter C" in the item relating to section 1375 and inserting "accumulated".

(C) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(D)" and inserting "section 1362(d)(3)(C)".

(d) ADJUSTMENTS TO BASIS OF INHERITED S STOCK TO REFLECT CERTAIN ITEMS OF INCOME.—Subsection (b) of section 1367 (relating to adjustments to basis of stock of shareholders, etc.) is amended by adding at the end thereof the following new paragraph:

"(4) ADJUSTMENTS IN CASE OF INHERITED STOCK.—

"(A) IN GENERAL.—If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in

the same manner as if the decedent had held directly his pro rata share of such item.

"(B) ADJUSTMENTS TO BASIS.—The basis determined under section 1014 of any stock in an S corporation shall be reduced by the portion of the value of the stock which is attributable to items constituting income in respect of the decedent."

(e) 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, 1991.

(2) SUBSECTION (d).—The amendment made by subsection (d) shall apply in the case of decedents dying after the date of the enactment of this Act.

PART II—ACCOUNTING PROVISIONS

SEC. 4611. MODIFICATIONS TO LOOK-BACK METHOD FOR LONG-TERM CONTRACTS.

(a) LOOK-BACK METHOD NOT TO APPLY IN CERTAIN CASES.—Subsection (b) of section 460 (relating to percentage of completion method) is amended by adding at the end thereof the following new paragraph:

"(6) ELECTION TO HAVE LOOK-BACK METHOD NOT APPLY IN DE MINIMIS CASES.—

"(A) AMOUNTS TAKEN INTO ACCOUNT AFTER COMPLETION OF CONTRACT.—Paragraph (1)(B) shall not apply with respect to any taxable year (beginning after the taxable year in which the contract is completed) if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of such taxable year, is within

"(ii) 10 percent of the cumulative look-back taxable income (or loss) under the contract as of the close of the most recent taxable year to which paragraph (1)(B) applied (or would have applied but for subparagraph (B)).

"(B) DE MINIMIS DISCREPANCIES.—Paragraph (1)(B) shall not apply in any case to which it would otherwise apply if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of each prior contract year, is within

"(ii) 10 percent of the cumulative look-back income (or loss) under the contract as of the close of such prior contract year.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) CONTRACT YEAR.—The term 'contract year' means any taxable year for which income is taken into account under the contract.

"(ii) LOOK-BACK INCOME OR LOSS.—The look-back income (or loss) is the amount which would be the taxable income (or loss) under the contract if the allocation method set forth in paragraph (2)(A) were used in determining taxable income.

"(iii) DISCOUNTING NOT APPLICABLE.—The amounts taken into account after the completion of the contract shall be determined without regard to any discounting under the 2nd sentence of paragraph (2).

"(D) CONTRACTS TO WHICH PARAGRAPH APPLIES.—This paragraph shall only apply if the taxpayer makes an election under this subparagraph. Unless revoked with the consent of the Secretary, such an election shall apply to all long-term contracts completed during the taxable year for which such election is made or during any subsequent taxable year."

(b) MODIFICATION OF INTEREST RATE.—

(1) IN GENERAL.—Subparagraph (C) of section 460(b)(2) is amended by striking "the overpayment rate established by section 6621" and inserting "the adjusted overpayment rate (as defined in paragraph (7))".

(2) ADJUSTED OVERPAYMENT RATE.—Subsection (b) of section 460 is amended by adding at the end thereof the following new paragraph:

"(7) ADJUSTED OVERPAYMENT RATE.—

(A) IN GENERAL.—The adjusted overpayment rate for any interest accrual period is the overpayment rate in effect under section 6621 for the calendar quarter in which such interest accrual period begins.

"(B) INTEREST ACCRUAL PERIOD.—For purposes of subparagraph (A), the term 'interest accrual period' means the period—

"(i) beginning on the day after the return due date for any taxable year of the taxpayer, and

"(ii) ending on the return due date for the following taxable year.

For purposes of the preceding sentence, the term 'return due date' means the date prescribed for filing the return of the tax imposed by this chapter (determined without regard to extensions)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts completed in taxable years ending after the date of the enactment of this Act.

SEC. 4612. SIMPLIFIED METHOD FOR CAPITALIZING CERTAIN INDIRECT COSTS.

(a) GENERAL RULE.—Subsection (i) of section 263A (relating to regulations) is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following:

"(3) regulations providing that allocations of costs of any administrative, service, or support function or department may be made on the basis of the base period percentage of the current costs of such function or department.

For purposes of paragraph (3), the term 'base period percentage' means, with respect to any function or department, the percentage of the costs of such function or department during a base period specified in regulations which were allocable to property to which this section applies."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 4613. TREATMENT OF CERTAIN AMOUNTS RECEIVED BY OPERATORS OF LICENSED COTTON WAREHOUSES.

(a) GENERAL RULE.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end thereof the following new subsection:

"(h) SPECIAL RULES FOR OPERATORS OF LICENSED COTTON WAREHOUSES.—

"(1) IN GENERAL.—In the case of any taxpayer which is the operator of a licensed cotton warehouse and the taxable income of which is computed under an accrual method of accounting, such taxpayer shall not be required to accrue any amounts to be received for processing and storing cotton at such warehouse until such amounts are actually received.

"(2) INTEREST ON DEFERRED TAX LIABILITY.—

"(A) IN GENERAL.—If any deferred amount is received during any taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of the interest determined under subparagraph (B) with respect to such deferred amount.

"(B) AMOUNT OF INTEREST.—The amount of interest determined under this subparagraph with respect to any deferred amount shall be determined—

"(i) on the amount of the tax for such taxable year which is attributable to such deferred amount,

"(ii) for the period beginning on the due date for the taxable year of the deferral and ending on the due date for the taxable year in which such deferred amount is received, and

"(iii) by using the Federal short-term rate in effect under section 1274 as of the due date for the taxable year in which such deferred amount is received, compounded semiannually.

"(3) TREATMENT AS INTEREST.—Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during the taxable year.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) LICENSED COTTON WAREHOUSE.—The term 'licensed cotton warehouse' means any warehouse for the storage of cotton which is licensed under the United States Warehouse Act (7 U.S.C. 241, et seq.) or under any similar State law.

"(B) DEFERRED AMOUNT.—The term 'deferred amount' means any amount which is includible in gross income for the taxable year but which would have been includible in gross income for a prior taxable year but for this subsection.

"(C) TAXABLE YEAR OF DEFERRAL.—The taxable year of the deferral is the taxable year for which the deferred

amount would have been includible in gross income but for this subsection.

"(D) DUE DATE.—The term 'due date' means the date prescribed for filing the return of tax imposed by this chapter, determined without regard to any extension.

"(5) ELECTION.—This subsection shall apply to a taxpayer only if such taxpayer makes an election under this paragraph. Such an election shall apply to the taxable year for which made and for all subsequent taxable years unless revoked with the consent of the Secretary."

(b) CONFORMING AMENDMENT.—Subparagraph (N) of section 26(b)(2) is amended by striking "sections 453(l)(3)" and inserting "sections 451(h)(2), 453(l)(3),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts accrued in taxable years beginning after December 31, 1991.

PART III—PROVISIONS RELATING TO REGULATED INVESTMENT COMPANIES

SEC. 4621. REPEAL OF 30-PERCENT GROSS INCOME LIMITATION.

(a) GENERAL RULE.—Subsection (b) of section 851 (relating to limitations) is amended by striking paragraph (3), by adding "and" at the end of paragraph (2), and by redesignating paragraph (4) as paragraph (3).

(b) TECHNICAL AMENDMENTS.—

(1) The material following paragraph (3) of section 851 (as redesignated by subsection (a)) is amended—

(A) by striking out "paragraphs (2) and (3)" and inserting "paragraph (2)", and

(B) by striking out the last sentence thereof.

(2) Subsection (c) of section 851 is amended by striking "subsection (b)(4)" each place it appears (including the heading) and inserting "subsection (b)(3)".

(3) Subsection (d) of section 851 is amended by striking "subsections (b)(4)" and inserting "subsections (b)(3)".

(4) Paragraph (1) of section 851(e) is amended by striking "subsection (b)(4)" and inserting "subsection (b)(3)".

(5) Paragraph (4) of section 851(e) is amended by striking "subsections (b)(4)" and inserting "subsections (b)(3)".

(6) Section 851 is amended by striking subsection (g) and redesignating subsection (h) as subsection (g).

(7) Subsection (g) of section 851 (as redesignated by paragraph (6)) is amended by striking paragraph (3).

(8) Section 817(h)(2) is amended—

(A) by striking "851(b)(4)" in subparagraph (A) and inserting "851(b)(3)", and

(B) by striking "851(b)(4)(A)(i)" in subparagraph (B) and inserting "851(b)(3)(A)(i)".

(9) Section 1092(f)(2) is amended by striking "Except for purposes of section 851(b)(3), the " and inserting "The".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 4622. BASIS RULES FOR SHARES IN OPEN-END REGULATED INVESTMENT COMPANIES.

(a) ADDITIONAL REPORTING REQUIREMENT.—Section 6045 (relating to returns of brokers) is amended by adding at the end thereof the following new subsection:

"(f) ADDITIONAL INFORMATION REQUIRED WITH RESPECT TO OPEN-END REGULATED INVESTMENT COMPANIES.—

"(1) IN GENERAL.—If any person is required under subsection (a) to make a return regarding the gross proceeds from any disposition of stock in an open-end regulated investment company, such return shall include for each such disposition—

"(A) the basis of the stock disposed of (determined by reference to the average basis of all of the stock in the account from which the disposition was made immediately before the disposition), and

"(B) the portion of such gross proceeds attributable to stock held for more than 1 year and the portion not so attributable.

Determinations under subparagraph (B) shall be made on a first-in, first-out, basis and determinations of basis and holding period shall be made in such manner as the Secretary may prescribe.

"(2) OPEN-END REGULATED INVESTMENT COMPANY.—For purposes of this subsection, the term 'open-end regulated investment company' means any regulated investment company which is offering for sale or has outstanding any redeemable security (as defined in section 2(a)(32) of the Investment Company Act of 1940) of which it is the issuer.

"(3) INFORMATION TRANSFERS.—To the extent provided in regulations, there shall be such exchanges of information between brokers as such regulations may require for purposes of enabling brokers to meet the requirements of this subsection.

"(4) APPLICATION OF SUBSECTION.—This subsection shall not apply with respect to stock in any account—

"(A) which was established before January 1, 1995, or

"(B) which includes any stock not acquired by purchase."

(b) BASIS FOR INCOME TAX PURPOSES.—Section 1012 of such Code is amended—

(1) by striking "The basis" and inserting "(a) GENERAL RULE.—The basis", and

(2) by adding at the end thereof the following new subsection:

"(b) SPECIAL RULES FOR STOCK IN OPEN-END REGULATED INVESTMENT COMPANIES.—

"(1) IN GENERAL.—In the case of any disposition of stock from a covered account—

"(A) the basis of such stock shall be determined by reference to the average basis of all of the stock in such account immediately before such disposition, and

"(B) the determination of which stock in such account is so disposed of shall be made on a first-in, first-out, basis.

"(2) COVERED ACCOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'covered account' means any account of stock in an open-end regulated investment company if section 6045(f) applies to such account.

"(B) ELECTION OUT.—The term 'covered account' shall not include any account if, on the taxpayer's return for his first taxable year in which a disposition from such account occurs, the taxpayer elects to have this subsection not apply to such account."

(c) TECHNICAL AMENDMENT.—Section 6724 of such Code is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULE FOR CERTAIN REPORTS WITH RESPECT TO STOCK IN OPEN END REGULATED INVESTMENT COMPANIES.—For purposes of sections 6721(e)(2)(B) and 6722(c)(1)(B), the amount required to be reported under section 6045 shall be determined without regard to subsection (f) thereof."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to returns and statements required for calendar year 1995 and subsequent calendar years.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to dispositions after December 31, 1994.

SEC. 4623. NONRECOGNITION TREATMENT FOR CERTAIN TRANSFERS BY COMMON TRUST FUNDS TO REGULATED INVESTMENT COMPANIES.

(a) GENERAL RULE.—Section 584 (relating to common trust funds) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) NONRECOGNITION TREATMENT FOR CERTAIN TRANSFERS TO REGULATED INVESTMENT COMPANIES.—

"(1) IN GENERAL.—If—

"(A) a common trust fund transfers substantially all of its assets to a regulated investment company in exchange solely for stock in such company, and

"(B) such stock is distributed by such common trust fund to participants in such common trust fund in exchange solely for their interests in such common trust fund,

no gain or loss shall be recognized by such common trust fund by reason of such transfer or distribution, and no gain or loss shall be recognized by any participant in such common trust fund by reason of such exchange.

"(2) BASIS RULES.—

"(A) REGULATED INVESTMENT COMPANY.—The basis of any asset received by a regulated investment company in a transfer referred to in paragraph (1)(A) shall be the same as it would be in the hands of the common trust fund.

"(B) PARTICIPANTS.—The basis of any stock in a regulated investment company which is received in an exchange referred to in paragraph (1)(B) shall be the same as that of the property exchanged.

"(3) TREATMENT OF ASSUMPTIONS OF LIABILITY.—

"(A) IN GENERAL.—In determining whether the transfer referred to in paragraph (1)(A) is in exchange solely for stock in the regulated investment company, the assumption

by such company of a liability of the common trust fund, and the fact that any property transferred by the common trust fund is subject to a liability, shall be disregarded.

"(B) SPECIAL RULE WHERE ASSUMED LIABILITIES EXCEED BASIS.—

"(i) IN GENERAL.—If in any transfer referred to in paragraph (1)(A) the assumed liabilities exceed the aggregate adjusted bases (in the hands of the common trust fund) of the assets transferred to the regulated investment company—

"(I) notwithstanding paragraph (1), gain shall be recognized to the common trust fund on such transfer in an amount equal to such excess,

"(II) the basis of the assets received by the regulated investment company in such transfer shall be increased by the amount so recognized, and

"(III) any adjustment to the basis of a participant's interest in the common trust fund as a result of the gain so recognized shall be treated as occurring immediately before the exchange referred to in paragraph (1)(B).

"(ii) ASSUMED LIABILITIES.—For purposes of clause (i), the term 'assumed liabilities' means the aggregate of—

"(I) any liability of the common trust fund assumed by the regulated investment company in connection with the transfer referred to in paragraph (1)(A), and

"(II) any liability to which property so transferred is subject.

"(4) COMMON TRUST FUND MUST MEET DIVERSIFICATION RULES.—This subsection shall not apply to any common trust fund which would not meet the requirements of section 368(a)(2)(F)(ii) if it were a corporation. For purposes of the preceding sentence, Government securities shall not be treated as securities of an issuer in applying the 25-percent and 50-percent test and such securities shall not be excluded for purposes of determining total assets under clause (iv) of section 368(a)(2)(F)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transfers after the date of the enactment of this Act.

SEC. 4624. NONRECOGNITION TREATMENT FOR CERTAIN TRANSFERS BY REGULATED INVESTMENT COMPANIES TO COMMON TRUST FUNDS.

(a) IN GENERAL.—If—

(1) a regulated investment company transfers substantially all of its assets to a common trust fund (as defined in section 584) in exchange solely for participating interests in such common trust fund,

(2) such participating interests are distributed by such regulated investment company to the shareholders of such regulated investment company in exchange for their shares in the regulated investment company, and

(3) as of October 1, 1992, a majority of the outstanding shares of such regulated investment company are owned benefi-

cially by accounts for which a single bank (or 2 or more banks which are members of the same affiliated group, within the meaning of section 1504(a) of the Internal Revenue Code of 1986) is a trustee, executor, administrator, or guardian and with respect to which accounts such bank (or banks) has sole or shared investment discretion.

for purposes of such Code, no gain or loss shall be recognized by such regulated investment company by reason of such transfer or distribution, and no gain or loss shall be recognized by any shareholder of such regulated investment company by reason of such exchange.

(b) BASIS RULES.—

(1) COMMON TRUST FUND.—The basis of any asset received by a common trust fund in a transfer referred to in subsection (a)(1) shall be the same as it would be in the hands of the regulated investment company.

(2) SHAREHOLDERS.—The basis of any participating interest in a common trust fund which is received in an exchange referred to in subsection (a)(2) shall be the same as that of the shares exchanged.

(c) TREATMENT OF ASSUMPTIONS OF LIABILITY.—

(1) IN GENERAL.—In determining whether the transfer referred to in subsection (a)(1) is in exchange solely for interests in the common trust fund, the assumption by such common trust fund of a liability of the regulated investment company, and the fact that any property transferred by the regulated investment company is subject to a liability, shall be disregarded.

(2) SPECIAL RULE WHERE ASSUMED LIABILITIES EXCEED BASIS.—

(A) IN GENERAL.—If in any transfer referred to in subsection (a)(1) the assumed liabilities exceed the aggregate adjusted basis (in the hands of the regulated investment company) of the assets transferred to the common trust fund—

(i) notwithstanding subsection (a), gain shall be recognized to the regulated investment company on such transfer in an amount equal to such excess, and

(ii) the basis of the assets received by the common trust fund in such transfer shall be increased by the amount so recognized.

(B) ASSUMED LIABILITIES.—For purposes of subparagraph (A), the term "assumed liabilities" means the aggregate of—

(i) any liability of the regulated investment company assumed by the common trust fund in connection with the transfer referred to in subsection (a)(1), and

(ii) any liability to which property so transferred is subject.

(d) REGULATED INVESTMENT COMPANY MUST MEET DIVERSIFICATION RULES.—This section shall not apply to any regulated investment company which does not meet the requirements of section 368(a)(2)(F)(ii) of such Code. For purposes of the preceding sentence, Government securities shall not be treated as securities of an issuer in applying the 25-percent and 50-percent tests and shall not be ex-

cluded for purposes of determining total assets under clause (iv) of such section 368(a)(2)(F).

(e) LIMITATION ON SUBSEQUENT TRANSFER.—This section shall not apply to a regulated investment company that received assets from a common trust fund in a transfer to which section 584(h)(1) of such Code applied.

(f) EFFECTIVE DATE.—The provisions of this section shall apply to transfers occurring after the date of the enactment of this Act and on or before September 30, 1993.

PART IV—TAX-EXEMPT BOND PROVISIONS

SEC. 4631. REPEAL OF $100,000 LIMITATION ON UNSPENT PROCEEDS UNDER 1-YEAR EXCEPTION FROM REBATE.

(a) IN GENERAL.—Subclause (I) of section 148(f)(4)(B)(ii) (relating to additional period for certain bonds) is amended by striking "the lesser of 5 percent of the proceeds of the issue or $100,000" and inserting "5 percent of the proceeds of the issue".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

SEC. 4632. EXCEPTION FROM REBATE FOR EARNINGS ON BONA FIDE DEBT SERVICE FUND UNDER CONSTRUCTION BOND RULES.

(a) IN GENERAL.—Subparagraph (C) of section 148(f)(4) is amended by adding at the end thereof the following new clause:

"(xvii) TREATMENT OF BONA FIDE DEBT SERVICE FUNDS.—If the spending requirements of clause (ii) are ment with respect to the available construction proceeds of a construction issue, then paragraph (2) shall not apply to earnings on a bona fide debt service fund for such issue."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

SEC. 4633. AGGREGATION OF ISSUES RULES NOT TO APPLY TO TAX OR REVENUE ANTICIPATION BONDS.

(a) IN GENERAL.—Section 150 (relating to definitions and special rules) is amended by adding at the end thereof the following new subsection:

"(f) TAX OR REVENUE ANTICIPATION BONDS TREATED AS SEPARATE ISSUES.—For purposes of this part, if—

"(1) all of the bonds which are part of an issue are qualified 501(c)(3) bonds or bonds which are not private activity bonds, and

"(2) any portion of such issue consists of tax or revenue anticipation bonds which are reasonably expected to meet the requirements of section 148(f)(4)(B)(iii),

then such portion shall, subject to appropriate allocations specified in regulations prescribed by the Secretary, be treated as a separate issue."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

SEC. 4634. EXCEPTION FROM PRO RATA ALLOCATION OF INTEREST EXPENSE OF FINANCIAL INSTITUTIONS TO TAX-EXEMPT INTEREST FOR SMALL ISSUERS INCREASED TO $20,000,000.

(a) EXCEPTION FROM PRO RATA ALLOCATION OF INTEREST EXPENSE OF FINANCIAL INSTITUTIONS TO TAX-EXEMPT INTEREST FOR SMALL ISSUERS INCREASED TO $20,000,000.—

(1) IN GENERAL.—Subparagraphs (C) and (D) of section 265(b)(3) (relating to exception for certain tax-exempt obligations) are each amended by striking "$10,000,000" each place it appears and inserting "$20,000,000".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to obligations issued in calendar years beginning after the date of the enactment of this Act.

(b) DEDUCTIBILITY AVAILABLE TO PARTICIPANTS IN POOLED ISSUES.—

(1) IN GENERAL.—Subparagraph (A) of section 265(b)(3) is amended by inserting "and any qualified tax-exempt pooled obligation acquired after December 31, 1992," after "after August 7, 1986,".

(2) QUALIFIED TAX-EXEMPT POOLED OBLIGATION DEFINED.—Section 265(b)(3) is amended by adding at the end thereof the following new subparagraph:

"(G) QUALIFIED TAX-EXEMPT POOLED OBLIGATION.—For purposes of subparagraph (A), the term 'qualified tax-exempt pooled obligation' means a tax-exempt obligation—

"(i) which is issued after December 31, 1992,

"(ii) which is not a private activity bond (as defined in section 141),

"(iii) which is designated by the issuer for purposes of this paragraph, and

"(iv) the proceeds of which are used exclusively (other than to pay the issuance costs of such obligation) to acquire from the issuer obligations—

"(I) which satisfy the requirements of this paragraph but are not designated for purposes of this paragraph, and

"(II) the weighted average maturity of which equals or exceeds the weighted average maturity of such obligation."

SEC. 4635. EXPANDED EXCEPTION FROM REBATE FOR ISSUERS ISSUING $10,000,000 OR LESS OF BONDS.

(a) IN GENERAL.—Subparagraph (D) of section 148(f) (relating to exception for governmental units issuing $5,000,000 or less of bonds) is amended by striking "$5,000,000" each place it appears (including the heading) and inserting "$10,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to bonds issued in calendar years beginning after the date of the enactment of this Act.

SEC. 4636. REPEAL OF DEBT SERVICE-BASED LIMITATION ON INVESTMENT IN CERTAIN NONPURPOSE INVESTMENTS.

(a) IN GENERAL.—Subsection (d) of section 148 (relating to special rules for reasonably required reserve or replacement fund) is amended by striking paragraph (3).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

SEC. 4637. REPEAL OF EXPIRED PROVISIONS.

(a) Paragraph (2) of section 148(c) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(b) Paragraph (4) of section 148(f) is amended by striking subparagraph (E).

(c) The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 4638. CLARIFICATION OF INVESTMENT-TYPE PROPERTY.

(a) IN GENERAL.—Subparagraph (D) of section 148(b)(2) is amended to read as follows:

"(D) any investment-type property, or".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1301 of the Tax Reform Act of 1986.

SEC. 4639. TAX-EXEMPT FINANCING FOR UNITED NATIONS OFFICE BUILDINGS.

(a) IN GENERAL.—A bond described in subsection (b) shall be treated as described in section 141(e)(1) of the Internal Revenue Code of 1986, but section 147(d) of such Code shall not apply to such bond.

(b) BOND DESCRIBED.—A bond is described in this subsection if such bond is issued after the date of the enactment of this Act as part of an issue 95 percent or more of the net proceeds of which are to be used to finance any office building (including land and space for supporting activities which are functionally related and subordinate thereto) for the United Nations or any agency or instrumentality thereof.

SEC. 4640. TAX TREATMENT OF 501(c)(3) BONDS SIMILAR TO GOVERNMENTAL BONDS.

(a) IN GENERAL.—Subsection (a) of section 150 (relating to definitions and special rules) is amended by striking paragraphs (2) and (4), by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) EXEMPT PERSON.—

"(A) IN GENERAL.—The term 'exempt person' means—

"(i) a governmental unit, or

"(ii) a 501(c)(3) organization, but only with respect to its activities which do not constitute unrelated trades or businesses as determined by applying section 513(a).

"(B) GOVERNMENTAL UNIT NOT TO INCLUDE FEDERAL GOVERNMENT.—The term 'governmental unit' does not include the United States or any agency or instrumentality thereof.

"(C) 501(c)(3) ORGANIZATION.—The term '501(c)(3) organization' means any organization described in section 501(c)(3) and exempt from tax under section 501(a)."

(b) REPEAL OF QUALIFIED 501(c)(3) BOND DESIGNATION.—Section 145 (relating to qualified 501(c)(3) bonds) is repealed.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 141(b) is amended—

(A) by striking "government use" in subparagraph (A)(ii)(I) and subparagraph (B)(ii) and inserting "exempt person use",

(B) by striking "a government use" in subparagraph (B) and inserting "an exempt person use",

(C) by striking "related business use" in subparagraph (A)(ii)(II) and subparagraph (B) and inserting "related private business use",

(D) by striking "RELATED BUSINESS USE" in the heading of subparagraph (B) and inserting "RELATED PRIVATE BUSINESS USE", and

(E) by striking "GOVERNMENT USE" in the heading thereof and inserting "EXEMPT PERSON USE".

(2) Subparagraph (A) of section 141(b)(6) is amended by striking "a governmental unit" and inserting "an exempt person".

(3) Paragraph (7) of section 141(b) is amended—

(A) by striking "government use" and inserting "exempt person use", and

(B) by striking "GOVERNMENT USE" in the heading thereof and inserting "EXEMPT PERSON USE".

(4) Section 141(b) is amended by striking paragraph (9).

(5) Paragraph (1) of section 141(c) is amended by striking "governmental units" and inserting "exempt persons".

(6) Section 141 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) CERTAIN ISSUES USED TO PROVIDE RESIDENTIAL RENTAL HOUSING FOR FAMILY UNITS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if any portion of the net proceeds of the issue are to be used (directly or indirectly) by an exempt person described in section 150(a)(2)(A)(ii) to provide residential rental property for family units.

"(2) EXCEPTION FOR BONDS USED TO PROVIDE QUALIFIED RESIDENTIAL RENTAL PROJECTS.—Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—

"(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

"(B) qualified residential rental projects (as defined in section 142(d)), or

"(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property.

"(3) SUBSTANTIAL REHABILITATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), rules similar to the rules of section 47(c)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

"(B) EXCEPTION.—For purposes of subparagraph (A), clause (ii) of section 47(c)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 47(c)(1)(C)(i) where appropriate due to circumstances not within the control of the owner.

"(4) CERTAIN PROPERTY TREATED AS NEW PROPERTY.—Solely for purposes of determining under paragraph (2)(A) whether the 1st use of property is pursuant to tax-exempt financing—

"(A) IN GENERAL.—If—

"(i) the 1st use of property is pursuant to taxable financing,

"(ii) there was a reasonable expectation (at the time such taxable financing was provided) that such financing would be replaced by tax-exempt financing, and

"(iii) the taxable financing is in fact so replaced within a reasonable period after the taxable financing was provided,

then the 1st use of such property shall be treated as being pursuant to the tax-exempt financing.

"(B) SPECIAL RULE WHERE NO OPERATING STATE OR LOCAL PROGRAM FOR TAX-EXEMPT FINANCING.—If, at the time of the 1st use of property, there was no operating State or local program for tax-exempt financing of the property, the 1st use of the property shall be treated as pursuant to the 1st tax-exempt financing of the property.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) TAX-EXEMPT FINANCING.—The term 'tax-exempt financing' means financing provided by tax-exempt bonds.

"(ii) TAXABLE FINANCING.—The term 'taxable financing' means financing which is not tax-exempt financing."

(7) Section 141(f), as redesignated by paragraph (6), is amended—

(A) by adding "or" at the end of subparagraph (E),

(B) by striking ", or" at the end of subparagraph (F), and inserting in lieu thereof a period, and

(C) by striking subparagraph (G).

(8) The last sentence of section 144(b)(1) is amended by striking "(determined" and all that follows to the period.

(9) Clause (ii) of section 144(c)(2)(C) is amended by striking "governmental unit" and inserting "exempt person".

(10) Section 146(g) is amended—

(A) by striking paragraph (2), and

(B) by redesignating the remaining paragraphs after paragraph (1) as paragraphs (2) and (3), respectively.

(11) The heading of section 146(k)(3) is amended by striking "GOVERNMENTAL and inserting "EXEMPT PERSON".

(12) The heading of section 146(mk) is amended by striking "GOVERNMENT" and inserting "EXEMPT PERSON".

(13) Subsection (h) of section 147 is amended to read as follows:

"(h) CERTAIN RULES NOT TO APPLY TO MORTGAGE REVENUE BONDS AND QUALIFIED STUDENT LOAN BONDS.—Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans' mortgage bond, or qualified student loan bond."

(14) Section 147 is amended by striking paragraph (4) of subsection (b) and redesignating paragraph (5) of such subsection as paragraph (4).

(15) Subparagraph (F) of section 148(d)(3) is amended—

(A) by striking "or which is a qualified 501(c)(3) bond", and

(B) by striking "GOVERNMENTAL USE BONDS AND QUALIFIED 501(C)(3)" in the heading thereof and inserting "EXEMPT PERSON".

(16) Subclause (II) of section 148(f)(4)(B)(ii) is amended by striking "(other than a qualified 501(c)(3) bond)".

(17) Clause (iv) of section 148(f)(4)(C) is amended—

(A) by striking "a governmental unit or a 501(c)(3) organization" each place it appears and inserting "an exempt person", and

(B) by striking "qualified 501(c)(3) bonds,".

(18) Subparagraph (A) of section 148(f)(7) is amended by striking "(other than a qualified 501(c)(3) bond)".

(19) Paragraph (2) of section 149(d) is amended—

(A) by striking "(other than a qualified 501(c)(3) bond)", and

(B) by striking "CERTAIN PRIVATE" in the heading thereof and inserting in lieu thereof "PRIVATE".

(20) Section 149(e)(2) is amended—

(A) by striking "which is not a private activity bond" in the second sentence and inserting "which is a bond issued for an exempt person described in section 150(a)(2)(A)(i)", and

(B) by adding at the end thereof the following new sentence: "Subparagraph (D) shall not apply to any bond which is not a private activity bond but which would be such a bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person."

(21) The heading of subsection (b) of section 150 is amended by striking "TAX-EXEMPT PRIVATE ACTIVITY BONDS" and inserting "CERTAIN TAX-EXEMPT BONDS".

(22) Paragraph (3) of section 150(b) is amended—

(A) by inserting "owned by a 501(c)(3) organization" after "any facility" in subparagraph (A),

(B) by striking "any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond" in subparagraph (A) and inserting "any bond which, when issued, purported to be a tax-exempt bond, and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person", and

(C) by striking the heading thereof and inserting "BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—".

(23) Paragraph (5) of section 150(b) is amended—

(A) by striking "private activity" in subparagraph (A),

(B) by inserting "and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person" after "tax-exempt bond" in subparagraph (A),

(C) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) such facility is required to be owned by an exempt person, and", and

(D) by striking "GOVERNMENTAL UNITS OR 501(C)(3) ORGANIZATIONS" in the heading thereof and inserting "EXEMPT PERSONS".

(24) Section 150, as amended by section 4525, is amended by adding at the end thereof the following new subsection:

"(g) CERTAIN RULES TO APPLY TO BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—

"(1) IN GENERAL.—Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person unless such bond satisfies the requirements of subsections (b) and (f) of section 147.

"(2) SPECIAL RULE FOR POOLED FINANCING OF 501(C)(3) ORGANIZATION.—

"(A) IN GENERAL.—At the election of the issuer, a bond described in paragraph (1) shall be treated as meeting the requirements of section 147(b) if such bond meets the requirements of subparagraph (B).

"(B) REQUIREMENTS.—A bond meets the requirements of this subparagraph if—

"(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units for acquisition of property to be used by such organizations,

"(ii) each loan described in clause (i) satisfies the requirements of section 147(b) (determined by treating each loan as a separate issue),

"(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an amount equal to 120 percent of the lendable proceeds of such issue, and

"(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued).''

(25) Section 1302 of the Tax Reform Act of 1986 is repealed.

(26) Subparagraph (C) of section 57(a)(5) is amended by striking clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(27) Paragraph (3) of section 103(b) is amended by inserting "and section 150(f)" after "section 149".

(28) Paragraph (3) of section 265(b) is amended—

(A) by striking clause (ii) of subparagraph (B) and inserting the following:

"(ii) CERTAIN BONDS NOT TREATED AS PRIVATE ACTIVITY BONDS.—For purposes of clause (i)(II), there shall not be treated as a private activity bond any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 (or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(o)(2)(A)))."; and

(B) by striking "(other than a qualified 501(c)(3) bond, as defined in section 145)" in subparagraph (C)(ii)(I).

(f) EFFECTIVE DATE; SPECIAL RULE.—The amendments made by this section shall apply to bonds issued after December 31, 1992.

(2) SPECIAL RULE FOR CERTAIN BONDS ISSUED AFTER DATE OF ENACTMENT.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any bond which—

(i) is issued after the date of the enactment of this Act, and

(ii) is part of an issue which is subject to any transitional rule under subtitle B of title XIII of the Tax Reform Act of 1986.

(B) ELECTION OUT.—This paragraph shall not apply to any issue with respect to which the issuer elects not to have this paragraph apply.

PART V—INSURANCE PROVISIONS

SEC. 4641. TREATMENT OF CERTAIN INSURANCE CONTRACTS ON RETIRED LIVES.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 817(d) (defining variable contract) is amended by striking "or" at the end of subparagraph (A), by striking "and" at the end of subparagraph (B) and inserting "or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) provides for funding of insurance on retired lives as described in section 807(c)(6), and".

(2) Paragraph (3) of section 817(d) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) in the case of funds held under a contract described in paragraph (2)(C), the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4642. TREATMENT OF MODIFIED GUARANTEED CONTRACTS.

(a) GENERAL RULE.—Subpart E of part I of subchapter L of chapter 1 (relating to definitions and special rules) is amended by inserting after section 817 the following new section:

"SEC. 817A. SPECIAL RULES FOR MODIFIED GUARANTEED CONTRACTS.

"(a) COMPUTATION OF RESERVES.—In the case of a modified guaranteed contract, clause (ii) of section 807(e)(1)(A) shall not apply.

"(b) SEGREGATED ASSETS UNDER MODIFIED GUARANTEED CONTRACTS MARKED TO MARKET.—

"(1) IN GENERAL.—In the case of any life insurance company, for purposes of this subtitle—

"(A) Any gain or loss with respect to a segregated asset shall be treated as ordinary income or loss, as the case may be.

"(B) If any segregated asset is held by such company as of the close of any taxable year—

"(i) such company shall recognize gain or loss as if such asset were sold for its fair market value on the last business day of such taxable year, and

"(ii) any such gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

"(2) SEGREGATED ASSET.—For purposes of paragraph (1), the term 'segregated asset' means any asset held as part a segregated account referred to in subsection (d)(1) under a modified guaranteed contract.

"(c) SPECIAL RULE IN COMPUTING LIFE INSURANCE RESERVES.—For purposes of applying section 816(b)(1)(A) to any modified guaranteed contract, an assumed rate of interest shall include a rate of interest determined, from time to time, with reference to a market rate of interest.

"(d) MODIFIED GUARANTEED CONTRACT DEFINED.—For purposes of this section, the term 'modified guaranteed contract' means a contract not described in section 817—

"(1) all or part of the amounts received under which are allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time with reference to market values,

"(2) which—

"(A) provides for the payment of annuities,

"(B) is a life insurance contract, or

"(C) is a pension plan contract which is not a life, accident, or health, property, casualty, or liability contract,

"(3) for which reserves are valued at market for annual statement purposes, and

"(4) which provides for a net surrender value or a policyholder's fund (as defined in section 807(e)(1)).

"(e) REGULATIONS.—The Secretary may prescribe regulations—

"(1) to provide for the treatment of market value adjustments under sections 72, 7702, 7702A, and 807(e)(1)(B),

"(2) to determine the interest rates applicable under sections 807(c)(3), 807(d)(2)(B), and 812 with respect to a modified guaranteed contract annually, in a manner appropriate for modified guaranteed contracts and, to the extent appropriate for such a contract, to modify or waive the applicability of section 811(d).

"(3) to provide rules to limit ordinary gain or loss treatment to assets constituting reserves for modified guaranteed contracts (and not other assets) of the company,

"(4) to provide appropriate treatment of transfers of assets to and from the segregated account, and

"(5) as may be necessary or appropriate to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for subpart E of part I of subchapter L of chapter 1 is amended by inserting after the item relating to section 817 the following new item:

"Sec. 817A. Special rules for modified guaranteed contracts."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

(2) TREATMENT OF NET ADJUSTMENTS.—In the case of any taxpayer required by the amendments made by this section to change its calculation of reserves to take into account market value adjustments and to mark segregated assets to market for any taxable year—

(A) such changes shall be treated as a change in method of accounting initiated by the taxpayer,

(B) such changes shall be treated as made with the consent of the Secretary, and

(C) the adjustments required by reason of section 481 of the Internal Revenue Code of 1986 shall be taken into account as ordinary income or loss by the taxpayer for the taxpayer's first taxable year beginning after December 31, 1991.

PART VI—COOPERATIVES

SEC. 4651. DISCHARGE OF INDEBTEDNESS INCOME FROM PREPAYMENT OF REA LOANS.

(a) IN GENERAL.—Subparagraph (C) of section 501(c)(12) is amended by striking "or" at the end of clause (i), by striking ", 306B," in clause (ii), by striking the period at the end of clause (ii) and inserting ", or", and by adding at the end thereof the following new clause:

"(iii) from the prepayment of a loan under section 306B(b) of the Rural Electrification Act of 1936 (as in effect on January 1, 1991)."

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 501(c)(12) is amended—

(1) by striking "or" in clause (iii),

(2) by striking "306B" in clause (iv),

(3) by striking the period at the end of clause (iv) and inserting ", or", and

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

"(v) from the prepayment of a loan under section 306B(b) of the Rural Electrification Act of 1936 (as in effect on January 1, 1991)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to prepayments made after December 31, 1992.

SEC. 4652. TREATMENT OF CERTAIN AMOUNTS RECEIVED BY A COOPERATIVE TELEPHONE COMPANY.

(a) NONMEMBER INCOME.—

(1) IN GENERAL.—Paragraph (12) of section 501(c) (relating to list of exempt organizations) is amended by adding at the end thereof the following new subparagraph:

"(E) In the case of a mutual or cooperative telephone company (hereafter in this subparagraph referred to as the 'cooperative'), 50 percent of the income received or accrued directly or indirectly from a nonmember telephone company for the performance of communication services by the cooperative shall be treated for purposes of subparagraph (A) as collected from members of the cooperative for the sole purpose of meeting the losses and expenses of the cooperative."

(2) CERTAIN BILLING AND COLLECTION SERVICE FEES NOT TAKEN INTO ACCOUNT.—Subparagraph (B) of section 501(c)(12) is amended by striking "or" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", or", and by adding at the end thereof the following new clause:

"(v) from billing and collection services performed for a nonmember telephone company.".

(3) CONFORMING AMENDMENT.—Clause (i) of section 501(c)(12)(B) is amended by inserting before the comma at the end thereof ", other than income described in subparagraph (E)".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received or accrued after December 31, 1992.

(5) NO INFERENCE AS TO UNRELATED BUSINESS INCOME TREATMENT OF BILLING AND COLLECTION SERVICE FEES.—Noth-

ing in the amendments made by this subsection shall be construed to indicate the proper treatment of billing and collection service fees under part III of subchapter F of chapter 1 of the Internal Revenue Code of 1986 (relating to taxation of business income of certain exempt organizations).

(b) TREATMENT OF CERTAIN INVESTMENT INCOME OF MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—

(1) IN GENERAL.—Paragraph (12) of section 501(c) (relating to list of exempt organizations) is amended by adding at the end thereof the following new subparagraph:

"(F) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account reserve income (as defined in section 512(d)(2)) if such income, when added to other income not collected from members for the sole purpose of meeting losses and expenses, does not exceed 35 percent of the company's total income. For the purposes of the preceding sentence, income referred to in subparagraph (B) shall not be taken into account."

(2) PORTION OF INVESTMENT INCOME SUBJECT TO UNRELATED BUSINESS INCOME TAX.—Section 512 is amended by adding at the end thereof the following new subsection:

"(d) INVESTMENT INCOME OF CERTAIN MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—

"(1) IN GENERAL.—In determining the unrelated business taxable income of a mutual or cooperative telephone company described in section 501(c)(12)—

"(A) there shall be included, as an item of gross income derived from an unrelated trade or business, reserve income to the extent such reserve income, when added to other income not collected from members for the sole purpose of meeting losses and expenses, exceeds 15 percent of the company's total income, and

"(B) there shall be allowed all deductions directly connected with the portion of the reserve income which is so included.

For purposes of the preceding sentence, income referred to in section 501(c)(12)(B) shall not be taken into account.

"(2) RESERVE INCOME.—For purposes of paragraph (1), the term 'reserve income' means income—

"(A) which would (but for this subsection) be excluded under subsection (b), and

"(B) which is derived from assets set aside for the repair or replacement of telephone system facilities of such company."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received or accrued after December 31, 1992.

SEC. 4653. TAX TREATMENT OF COOPERATIVE HOUSING CORPORATIONS.

(a) SECTION 277 NOT TO APPLY TO COOPERATIVE HOUSING CORPORATIONS.—Section 277(b) (relating to exceptions) is amended by striking "or" at the end of paragraph (3), by striking the period at

the end of paragraph (4) and inserting a comma and "or", and by adding at the end thereof the following new paragraph:

"(5) which for the taxable year is a cooperative housing corporation described in section 216(b)(1) (determined without regard to section 143(k)(9)(E))."

(b) APPLICATION OF RULES RELATING TO TAX TREATMENT OF COOPERATIVES.—

(1) PATRONAGE EARNINGS MAY BE OFFSET ONLY BY PATRONAGE LOSSES.—Section 1388(a) is amended by adding at the end the following new sentence: "In no event shall any patronage losses of an organization described in section 277(b)(5) be used to offset earnings which are not patronage earnings."

(2) PATRONAGE EARNINGS AND LOSSES OF COOPERATIVE HOUSING CORPORATIONS.—Section 1388 is amended by adding at the end the following new subsection:

"(k) PATRONAGE EARNINGS OR LOSSES DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The terms 'patronage earnings' and 'patronage losses' mean earnings and losses, respectively, which are derived from business done with or for patrons of the organization.

"(2) SPECIAL RULES FOR COOPERATIVE HOUSING CORPORATION.—In the case of a cooperative housing corporation, the following earnings shall be treated as patronage earnings:

"(A) Interest on reasonable reserves established in connection with the corporation, including reserves required by a governmental agency or lender.

"(B) Income from laundry and parking facilities to the extent attributable to use of the facilities by tenant-stockholders and their guests.

"(C) In the case of a cooperative housing corporation with respect to which the requirements of clause (i) of section 143(k)(9)(D) are met at all times during the taxable year, rental income from other than tenant-stockholders to the extent attributable to any project operated by the corporation.

"(3) DEFINITIONS.—For purposes of paragraph (2)—

"(A) COOPERATIVE HOUSING CORPORATION.—The term 'cooperative housing corporation' has the meaning given such term by section 216(b)(1) (without regard to section 143(k)(9)(E)).

"(B) TENANT-STOCKHOLDER.—The term 'tenant-stockholder' has the meaning given such term by section 216(b)(2)."

(3) CONFORMING AMENDMENT.—Section 1388(j) is amended by striking paragraph (4).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) NO INFERENCE.—In the case of any item (or period) to which the amendments made by this section do not apply—

(A) nothing in the provisions of this section shall be construed as a change in the treatment of income derived

by any cooperative housing corporation, or any corporation operating on a cooperative basis under section 1381 of the Internal Revenue Code of 1986, and

(B) the Internal Revenue Code of 1986 shall be applied to such item or for such period as if the amendments made by this secion had not been enacted.

PART VII—OTHER PROVISIONS

SEC. 4661. CLOSING OF PARTNERSHIP TAXABLE YEAR WITH RESPECT TO DECEASED PARTNER, ETC.

(a) GENERAL RULE.—Subparagraph (A) of section 706(c)(2) (relating to disposition of entire interest) is amended to read as follows:

"(A) DISPOSITION OF ENTIRE INTEREST.—The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates (whether by reason of death, liquidation, or otherwise)."

(b) CLERICAL AMENDMENT.—The paragraph heading for paragraph (2) of section 706(c) is amended to read as follows:

"(2) TREATMENT OF DISPOSITIONS.—".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years beginning after December 31, 1992.

SEC. 4662. REPEAL OF SPECIAL TREATMENT OF OWNERSHIP CHANGES IN DETERMINING ADJUSTED CURRENT EARNINGS.

(a) GENERAL RULE.—Paragraph (4) of section 56(g) (relating to adjustments) is amended by striking subparagraph (G) and by redesignating the following subparagraph as paragraph (G).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to ownership changes after December 31, 1991.

SEC. 4663. AUTHORIZATION FOR BUREAU OF LAND MANAGEMENT USE OF REFORESTATION TRUST FUND.

(A) IN GENERAL.—Section 303 of Public Law 96-451 (16 U.S.C. 1606a) is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking "$30,000,000" and inserting "$45,000,000"; and

(B) by adding at the end thereof the following new paragraphs:

"(4) Of the amounts transferred to the Trust Fund under paragraph (1) in any fiscal year—

"(A) $30,000,000 shall be allocated and made available to the Secretary of Agriculture; and

"(B) the remaining balance shall be allocated and made available to the Secretary of the Interior.

"(5)(A) If the remaining balance allocated and made available to the Secretary of the Interior under paragraph (4)(B) is less than $15,000,000 in any fiscal year, the Secretary of the Treasury shall transfer to the Trust Fund and make available to the Secretary of the Interior, in accordance with subparagraph (B), an amount equal to the difference between $15,000,000 and the remaining balance.

"(B) The amount transferred pursuant to subparagraph (A) shall be obtained as follows:

"(i) 93⅓ percent of the amount shall be taken from the Federal portion of the Bureau of Land Management timber receipt payments from the Coos Bay Wagon Road grant lands in Oregon; and

"(ii) the remainder of the amount shall be taken from the Federal portion of the Bureau of Land Management timber receipt payments from public domain lands in the States.";

(2) in the first sentence of subsection (c)(1) by inserting "and the Secretary of the Interior" after "Secretary of Agriculture";

(3) in subsection (d)—

(A) by striking "available" and inserting "available to the Secretary of Agriculture"; and

(B) by striking "amounts" and inserting "amounts that were available to the Secretary of Agriculture but"; and

(4) by adding at the end thereof the following new subsection:

"(e)(1) In accordance with paragraph (2), the Secretary of the Interior may obligate, in each fiscal year, such sums as are available to the Secretary of the Interior in the Trust Fund to supplement expenditures of the Bureau of Land Management for, in order of priority.

"(A) reforestation and forest development of public lands administered by the Secretary of the Interior acting through the Bureau of Land Management, including projects to improve the overall health and productivity of the forest ecosystem;

"(B) negotiation and implementation of cooperative relationships, including the acquisition of voluntary cooperative conservation easements, when such relationships promote or enhance successful reforestation or forest development or contribute to the long-term productivity of the forest ecosystem; and

"(C) properly allocable administrative costs of the Federal Government for the activities described in subparagraphs (A) and (B).

"(2) The Secretary of the Interior shall allocate the sums described in paragraph (1) as follows:

"(A) $14,000,000 for Oregon and California Railroad and Coos Bay Wagon Road grant lands in Oregon; and

"(B) $1,000,000 for public domain lands, to be allocated among the States in which the lands are located by taking into account, in order of priority—

"(i) the level of timber sales (measured in board feet) from the public domain lands within each State in the previous calendar year;

"(ii) the amount of reforestation backlog in the State;

"(iii) the need for planting as part of the reforestation program; and

"(iv) the need for forest development as part of the reforestation program."

(b) Effective Date.—The amendment made by subsection (a) shall apply to fiscal years beginning after September 30, 1992.

SEC. 4664. PRIVATE FOUNDATIONS PERMITTED TO USE COMMON INVESTMENT FUNDS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.), is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) COOPERATIVE SERVICE ORGANIZATIONS FOR CERTAIN FOUNDATIONS.—

"(1) IN GENERAL.—For purposes of this title, if an organization—

"(A) is organized and operated solely for purposes referred to in subsection (f)(1),

"(B) is composed solely of members which are exempt from taxation under subsection (a) and are—

"(i) private foundations, or

"(ii) community foundations as to which section 170(b)(1)(A)(vi) applies,

"(C) has at least 20 members,

"(D) does not at any time after the second taxable year beginning after the date of its organization, or, if later, beginning after the date of the enactment of this subsection, have a member which holds more than 10 percent (by value) of the interests in the organization,

"(E) is organized and controlled by its members but is not controlled by any one member and does not have a member which controls another member of the organization, and

"(F) permits members of the organization to require the dismissal of any of the organization's investment advisors, following reasonable notice, if members holding a majority of interest in the account managed by such advisor vote to remove such advisor,

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

"(2) TREATMENT OF INCOME OF MEMBERS.—If any member of an organization described in paragraph (1) is a private foundation (other than an exempt operating foundation, as defined in section 4940(d)), such private foundation's allocable share of the capital gain net income and gross investment income of the organization for any taxable year of the organization shall be treated, for purposes of section 4940, as capital gain net income and gross investment income of such private foundation (whether or not distributed to such foundation) for the taxable year of such private foundation with or within which the taxable year of the organization described in paragraph (1) ends (and such private foundation shall take into account its allocable share of the deductions referred to in section 4940(c)(3) of the organization).

"(3) APPLICABLE EXCISE TAXES.—Subchapter A of chapter 42 (other than sections 4940 and 4942) shall apply to any organization described in paragraph (1)."

(b) CONFORMING AMENDMENTS.—

(1) Section 4945(d) is amended by adding at the end the following new flush sentence:

"Paragraph (4)(B) shall not apply to a grant to an organization described in section 501(n)."

(2) Section 4942(g)(1)(A) is amended by inserting "or an organization described in section 501(n)" after "subsection (j)(3))".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending on or after December 31, 1992.

SEC. 4665. MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Subparagraph (A) of section 29(c)(2) (relating to gas from geopressured brine, etc.) is amended by adding at the end the following new sentence: "If the Federal Energy Regulatory Commission ceases to make the determinations described in the preceding sentence, the Secretary shall make such determinations in accordance with section 503 of such Act."

(b) CONFORMING AMENDMENT.—Section 29(c)(2)(A) is amended by inserting "(as in effect before its repeal by the Natural Gas Wellhead Decontrol Act of 1989) after "Natural Gas Policy Act of 1978".

Subtitle G—Estate And Gift Tax Provisions

SEC. 4701. CLARIFICATION OF WAIVER OF CERTAIN RIGHTS OF RECOVERY.

(a) AMENDMENT TO SECTION 2207A.—Paragraph (2) of section 2207A(a) (relating to right of recovery in the case of certain marital deduction property) is amended to read as follows:

"(2) DECEDENT MAY OTHERWISE DIRECT.—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(b) AMENDMENT TO SECTION 2207B.—Paragraph (2) of section 2207B(a) (relating to right of recovery where decedent retained interest) is amended to read as follows:

"(2) DECEDENT MAY OTHERWISE DIRECT.—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to the estates of decedents dying after the date of the enactment of this Act.

SEC. 4702. ADJUSTMENTS FOR GIFTS WITHIN 3 YEARS OF DECEDENT'S DEATH.

(a) GENERAL RULE.—Section 2035 is amended to read as follows:

"SEC. 2035. ADJUSTMENTS FOR CERTAIN GIFTS MADE WITHIN 3 YEARS OF DECEDENT'S DEATH.

"(a) INCLUSION OF CERTAIN PROPERTY IN GROSS ESTATE.—If—

"(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

"(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

"(b) INCLUSION OF GIFT TAX ON GIFTS MADE DURING 3 YEARS BEFORE DECEDENT'S DEATH.—The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

"(c) OTHER RULES RELATING TO TRANSFERS WITHIN 3 YEARS OF DEATH.—

"(1) IN GENERAL.—For purposes of—

"(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

"(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

"(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

"(2) COORDINATION WITH SECTION 6166.—An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of paragraph (1).

"(3) SMALL TRANSFERS.—Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(a)(2)) to file any gift tax return for such year with respect to transfers to such donee.

"(d) EXCEPTION.—Subsection (a) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

"(e) TREATMENT OF CERTAIN TRANSFERS FROM REVOCABLE TRUSTS.—For purposes of this section and section 2038, any transfer from any portion of a trust with respect to which the decedent was the grantor during any period when the decedent held the power to revest in the decedent title to such portion shall be treated as a transfer made directly by the decedent."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by striking "gifts" in the item relating to section 2035 and inserting "certain gifts".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after the date of the enactment of this Act.

SEC. 4703. CLARIFICATION OF QUALIFIED TERMINABLE INTEREST RULES.

(a) GENERAL RULE.—

(1) ESTATE TAX.—Subparagraph (B) of section 2056(b)(7) (defining qualified terminable interest property) is amended by adding at the end thereof the following new clause:

"(v)(i) TREATMENT OF CERTAIN INCOME DISTRIBUTIONS.—An income interest shall not fail to qualify as a qualified income interest for life solely because income for the period after the last distribution date and on or before the date of the surviving spouse's death is not required to be distributed to the surviving spouse or to the estate of the surviving spouse."

(2) GIFT TAX.—Paragraph (3) of section 2523(f) is amended by striking "and (iv)" and inserting ", (iv), and (vi)".

(b) CLARIFICATION OF SUBSEQUENT INCLUSIONS.—Section 2044 is amended by adding at the end thereof the following new subsection:

"(d) CLARIFICATION OF INCLUSION OF CERTAIN INCOME.—The amount included in the gross estate under subsection (a) shall include the amount of any income from the property to which this section applies for the period after the last distribution date and on or before the date of the decedent's death if such income is not otherwise included in the decedent's gross estate."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to the estates of decedents dying, and gifts made, after the date of the enactment of this Act.

(2) APPLICATION OF SECTION 2044 TO TRANSFERS BEFORE DATE OF ENACTMENT.—In the case of the estate of any decedent dying after the date of the enactment of this Act, if there was a transfer of property on or before such date—

(A) such property shall not be included in the gross estate of the decedent under section 2044 of the Internal Revenue Code of 1986 if no prior marital deduction was allowed with respect to such a transfer of such property to the decedent, but

(B) such property shall be so included if such a deduction was allowed.

SEC. 4704. TRANSITIONAL RULE UNDER SECTION 2056A.

(a) GENERAL RULE.—In the case of any trust created under an instrument executed before the date of the enactment of the Revenue Reconciliation Act of 1990, such trust shall be treated as meeting the requirements of paragraph (1) of section 2056A(a) of the Internal Revenue Code of 1986 if the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect as if included in the provisions of section 11702(g) of the Revenue Reconciliation Act of 1990.

SEC. 4705. OPPORTUNITY TO CORRECT CERTAIN FAILURES UNDER SECTION 2032A.

(a) GENERAL RULE.—Paragraph (3) of section 2032A(d) (relating to modification of election and agreement to be permitted) is amended to read as follows:

"(3) MODIFICATION OF ELECTION AND AGREEMENT TO BE PERMITTED.—The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but—

"(A) the notice of election, as filed, does not contain all required information, or

"(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to the estates of decedents dying after the date of the enactment of this Act.

SEC. 4706. REPEAL OF CERTAIN THROWBACK RULES APPLICABLE TO DOMESTIC TRUSTS.

(a) ACCUMULATION DISTRIBUTIONS.—

(1) IN GENERAL.—Section 665 is amended by adding at the end the following new subsection:

"(f) ACCUMULATION DISTRIBUTIONS AFTER 1992.—For purposes of this subpart—

"(1) IN GENERAL.—In the case of a qualified trust, any distribution in any taxable year beginning after December 31, 1992, shall be computed without regard to any undistributed net income.

"(2) QUALIFIED TRUST.—For purposes of this subsection, the term 'qualified trust' means any trust other than—

"(A) a foreign trust, or

"(B) a trust created before March 1, 1984, unless it is established that the trust would not be aggregated with other trusts under section 643(f) if such section applied to such trust."

(2) CONFORMING AMENDMENT.—Subsection (b) of section 665 is amended by inserting "except as provided in subsection (b)," after "subpart,"

(b) PROPERTY TRANSFERRED TO TRUSTS.—Subsection (e) of section 644 is amended by striking "or" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", or ", and by adding at the end the following new paragraph:

"(5) in the case of a qualified trust (as defined in section 665(f)(2)), any sale or exchange of property after December 31, 1992."

(c) EFFECTIVE DATES.—

(1) ACCUMULATION DISTRIBUTION.—The amendments made by subsection (a) shall apply to distribution in taxable years beginning after December 31, 1992.

(2) TRANSFERRED PROPERTY.—The amendments made by subsection (b) shall apply to sales or exchanges after December 31, 1992.

SEC. 4707. CERTAIN CASH RENTALS OF FARMLAND NOT TO CAUSE RECAPTURE OF SPECIAL ESTATE TAX VALUATION.

(a) IN GENERAL.—Subsection (c) of section 2032A (relating to tax treatment of dispositions and failures to use for qualified use) is amended by adding at the end thereof the following new paragraph:

"(8) CERTAIN CASH RENTAL NOT TO CAUSE RECAPTURE.—For purposes of this subsection, a qualified heir shall not be treated as failing to use property in a qualified use solely because such heir rents such property on a net cash basis to a member of the decedent's family, but only if, during the period of the lease, such member of the decedent's family uses such property in a qualified use."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to with respect to rentals occurring after December 31, 1976.

Subtitle H—Excise Tax Simplification

PART I—FUEL TAX PROVISIONS

SEC. 4801. REPEAL OF CERTAIN RETAIL AND USE TAXES.

(a) IN GENERAL.—Section 4041 is amended to read as follows:

"SEC. 4041. SPECIAL MOTOR FUELS AND NONCOMMERCIAL AVIATION GASOLINE.

"(a) SPECIAL MOTOR FUELS.—

"(1) IN GENERAL.—There is hereby imposed a tax on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle or a motorboat for use as a fuel in such motor vehicle or motorboat, or

"(B) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under subparagraph (A).

"(2) RATE OF TAX.—The rate of the tax imposed by this subsection shall be the aggregate rate of tax in effect under section 4081 at the time of such sale or use.

"(3) CERTAIN FUELS EXEMPT FROM TAX.—The tax imposed by this subsection shall not apply to gasoline (as defined in section 4082), diesel fuel (as defined in section 4092), kerosene, gas oil, or fuel oil.

"(4) REDUCED RATES OF TAX ON CERTAIN FUELS.—

"(A) QUALIFIED METHANOL AND ETHANOL FUEL.—

"(i) IN GENERAL.—In the case of any qualified methanol or ethanol fuel—

"(I) the Highway Trust Fund financing rate applicable under paragraph (2) shall be 5.4 cents per gallon less than the otherwise applicable rate (6 cents per gallon less in the case of a mixture none of the alcohol in which consists of ethanol), and

"(II) the Leaking Underground Storage Tank Trust Fund financing rate applicable under paragraph (2) shall be 0.05 cent per gallon.

"(ii) QUALIFIED METHANOL OR ETHANOL FUEL.—The term 'qualified methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from a substance other than petroleum or natural gas.

"(iii) TERMINATION.—Clause (i) shall not apply to any sale or use after September 30, 2000.

"(B) NATURAL GAS-DERIVED METHANOL OR ETHANOL FUEL.—

"(i) IN GENERAL.—In the case of natural gas-derived methanol or ethanol fuel—

"(I) the Highway Trust Fund financing rate applicable under paragraph (2) shall be 5.75 cents per gallon, and

"(II) the deficit reduction rate applicable under paragraph (2) shall be 1.25 cents per gallon.

"(ii) NATURAL GAS-DERIVED METHANOL OR ETHANOL FUEL.—The term 'natural-gas derived methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

"(C) OTHER FUELS CONTAINING ALCOHOL.—

"(i) IN GENERAL.—Under regulations prescribed by the Secretary, in the case of any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)), the Highway Trust Fund financing rate applicable under paragraph (2) shall be the comparable rate under section 4081.

"(ii) LATER SEPARATION.—If any person separates the liquid fuel from a mixture of the liquid fuel and alcohol to which clause (i) applies, such separation shall be treated as a sale of the liquid fuel. Any tax imposed on such sale shall be reduced by the amount (if any) of the tax imposed on the sale of such mixture.

"(iii) TERMINATION.—Clause (i) shall not apply to any sale or use after September 30, 2000.

"(D) LIQUEFIED PETROLEUM GAS.—The rate of tax applicable under paragraph (2) to liquefied petroleum gas shall be determined without regard to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.

"(5) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—No tax shall be imposed by paragraph (1) on liquids sold for use or used in an off-highway business use (within the meaning of section 6420(f)).

"(b) NONCOMMERCIAL AVIATION GASOLINE.—

"(1) IN GENERAL.—There is hereby imposed a tax on gasoline—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft in noncommercial aviation, or

"(B) used by any person as a fuel in an aircraft in noncommercial aviation unless there was a taxable sale of such gasoline under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed by section 4081.

"(2) RATE OF TAX.—The rate of the tax imposed by paragraph (1) on any gasoline is the excess of 15 cents a gallon over the sum of the Highway Trust Fund financing rate plus the deficit reduction rate at which tax was imposed on such gasoline under section 4081.

"(3) NONCOMMERCIAL AVIATION.—For purposes of this subsection, the term 'noncommercial aviation' means any use of an aircraft other than use in a business of transporting persons or property for compensation or hire by air. Such term includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282.

"(4) EXEMPTION FOR FUELS CONTAINING ALCOHOL.—No tax shall be imposed by this subsection on any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)).

"(5) EXEMPTION FOR CERTAIN HELICOPTER USES.—No tax shall be imposed by this subsection on gasoline sold for use or used in a helicopter for purposes of providing transportation with respect to which the requirements of subsection (e) or (f) of section 4261 are met.

"(6) REGISTRATION.—Except as provided in regulations prescribed by the Secretary, if any gasoline is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this subsection that a tax imposed by this subsection applies to the sale of such gasoline unless the purchaser is registered in such manner (and furnished such information in respect of the use of the gasoline) as the Secretary shall by regulations provide.

"(7) GASOLINE.—For purposes of this subsection, the term 'gasoline' has the meaning given such term by section 4082.

"(8) TERMINATION.—Paragraph (1) shall not apply to any sale or use after December 31, 1995.

"(c) EXEMPTION FOR FARM USE.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes (determined in accordance with paragraphs (1), (2), and (3) of section 6420(e)).

"(2) TERMINATION.—Except with respect to so much of the tax imposed by subsection (a) as is determined by reference to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, paragraph (1) shall not apply after September 30, 1999.

"(d) EXEMPTIONS FOR STATE AND LOCAL GOVERNMENTS, SCHOOLS, EXPORTATION, AND SUPPLIES FOR VESSELS AND AIRCRAFT.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use, or used, in an exempt use described in paragraph (4), (5), (6), or (7) of section 6420(b).

"(2) TERMINATION.—Except with respect to so much of the tax imposed by subsection (a) as is determined by reference to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, after September 30, 1999, paragraph (1) shall not apply to exempt uses described in paragraph (4) and (5) of section 6420(b).

"(e) EXEMPTION FOR USE BY CERTAIN AIRCRAFT MUSEUMS.—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used in an exempt use described in section 6420(b)(11)."

(b) CERTAIN ADDITIONAL PURCHASERS OF FUEL TREATED AS PRODUCERS.—

(1) IN GENERAL.—Subparagraph (C) of section 4092(b)(1) is amended to read as follows:

"(C) REDUCED-TAX PURCHASERS TREATED AS PRODUCERS.—Any person to whom any fuel is sold in a sale on which the amount of tax otherwise required to be paid under section 4091 is reduced under section 4093 shall be treated as the producer of such fuel. The amount of tax imposed by section 4091 on any sale of such fuel by such person shall be reduced by the amount of tax imposed under section 4091 (and not credited or refunded) on any prior sale of such fuel."

(2) CONFORMING AMENDMENT.—Subsection (b) of section 4093 is amended by inserting "(as defined in section 4092(b) without regard to paragraph (1)(C) thereof)" after "producer".

SEC. 4802. REVISION OF FUEL TAX CREDIT AND REFUND PROCEDURES.

(a) REFUNDS TO CERTAIN SELLERS OF DIESEL FUEL AND AVIATION FUEL.—

(1) IN GENERAL.—Paragraph (2) of section 6416(b) is amended by striking "4091 or 4121" and inserting "4121 or 4091; except that this paragraph shall apply to a person selling diesel fuel or aviation fuel for a use described in the first sentence if such person meets such requirements as the Secretary may by regulations prescribe".

(2) LIMITATIONS ON AMOUNT OF TAX ONLY HIGHWAY TRUST FUND FINANCING RATE TO BE REFUNDABLE.—Paragraph (2) of section 6416(b) is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to the taxes imposed by sections 4081 and 4091 with respect to any use to the same extent that section 6420(a) does not apply to such use by reason of paragraph (1) or (2) of section 6420(c)."

(b) CONSOLIDATION OF REFUND PROVISIONS; REPEAL OF CONSENT REQUIREMENT FOR REFUND OF FUEL TAXES TO CROPDUSTERS, ETC.—Section 6420 (relating to gasoline used on farms) is amended to read as follows:

"SEC. 6420. CERTAIN TAXES ON FUELS USED FOR EXEMPT PURPOSES.

"(a) IN GENERAL.—Except as otherwise provided in this section, if any fuel on which tax was imposed under section 4041, 4081, or

4091 is used in an exempt use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel the amount equal to the aggregate tax imposed on such fuel under such sections.

"(b) EXEMPT USES.—For purposes of this section, the term 'exempt use' means—

"(1) in the case of diesel fuel, use other than as a fuel in a diesel-powered highway vehicle or a diesel-powered motorboat,

"(2) in the case of aviation fuel, use other than as a fuel in an aircraft,

"(3) in the case of gasoline or aviation fuel, use in an aircraft other than in noncommercial aviation (as defined in section 4041(b)),

"(4) use by any State, any political subdivision of a State, or the District of Columbia,

"(5) use by a nonprofit educational organization (as defined in section 4221(d)(5)),

"(6) export,

"(7) use as supplies for vessels or aircraft (within the meaning of section 4221(d)(3)),

"(8) use on a farm for farming purposes (within the meaning of subsection (e)),

"(9) use in an off-highway business use (within the meaning of subsection (f)),

"(10) use in qualified bus transportation (within the meaning of subsection (g)),

"(11) use by an aircraft museum (within the meaning of subsection (h)),

"(12) use in a nonpurpose use (within the meaning of subsection (i)),

"(13) use in a helicopter for purposes of providing transportation with respect to which the requirements of subsection (e) or (f) of section 4261 are met, and

"(14) use in producing a mixture of a fuel if at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)) and if such mixture is sold or used in the trade or business of the person producing such mixture.

Paragraph (14) shall not apply with respect to any mixture sold or used after September 30, 2000.

"(c) LIMITATIONS ON AMOUNT OF PAYMENT.—

"(1) NO REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES IN CERTAIN CASES.—Subsection (a) shall not apply to so much of the taxes imposed by sections 4081 and 4091 as are attributable to a Leaking Underground Storage Tank Trust Fund financing rate in the case of—

"(A) fuel used in a train, and

"(B) fuel used in any aircraft (except as supplies for vessels or aircraft within the meaning of section 4221(d)(3)).

"(2) NO REFUND OF DEFICIT REDUCTION TAX ON DIESEL FUEL USED IN TRAINS.—Subsection (a) shall not apply to so much of the tax imposed by section 4091 as is attributable to a deficit reduction rate in the case of diesel fuel used in a diesel-powered train unless such fuel was used by a State or any political subdivision thereof.

"(3) NO REFUND OF PORTION OF TAX ON DIESEL FUEL USED IN CERTAIN BUSES.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the rate of tax taken into account under subsection (a) with respect to diesel fuel used in qualified bus transportation (within the meaning of subsection (g)(1)) shall be 3.1 cents per gallon less than the aggregate rate of tax imposed on such fuel by section 4091.

"(B) EXCEPTION FOR SCHOOL BUS TRANSPORTATION.—Subparagraph (A) shall not apply to fuel used in an automobile bus while engaged in transportation described in subsection (g)(1)(B).

"(C) EXCEPTION FOR CERTAIN INTRACITY TRANSPORTATION.—Subparagraph (A) shall not apply to fuel used in any automobile bus while engaged in furnishing (for compensation) intracity passenger land transportation—

"(i) which is available to the general public, and

"(ii) which is scheduled and along regular routes,

but only if such bus is a qualified local bus.

"(D) QUALIFIED LOCAL BUS.—For purposes of this paragraph, the term 'qualified local bus' means any local bus—

"(i) which has a seating capacity of at least 20 adults (not including the driver), and

"(ii) which is under contract with (or is receiving more than a nominal subsidy from) any State or local government (as defined in section 4221(d)) to furnish such transportation.

"(4) ALCOHOL FUELS.—

"(A) IN GENERAL.—In the case of a fuel used as described in subsection (b)(14) and on which tax was imposed at regular tax rate, the rate of tax taken into account under subsection (a) with respect to the fuel so used shall equal the excess of the regular tax rate over the incentive tax rate.

"(B) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (c) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (d) thereof.

"(C) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (d)(1)(B) thereof.

"(5) GASOHOL USED IN NONCOMMERCIAL AVIATION.—If—

"(A) tax is imposed by section 4081 at the rate determined under subsection (c) thereof on gasohol (as defined in such subsection), and

"(B) such gasohol is used as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(b)),

the payment under subsection (a) shall be equal to 1.4 cents (2 cents in the case of gasohol none of the alcohol in which consists of ethanol) per gallon of gasohol so used.

"(d) TIME FOR FILING CLAIMS; PERIOD COVERED.—

"(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), not more than one claim may be filed under this section by any person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during his taxable year; and no claim shall be allowed under this paragraph with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during any taxable year unless filed by the purchaser not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A.

"(2) EXCEPTIONS.—

"(A) IN GENERAL.—If as of the close of any quarter of a person's taxable year, $750 or more is payable under this section to such person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during such quarter or any prior quarter of such taxable year (and for which no other claim has been filed), a claim may be filed under this section with respect to fuel so used (or qualified diesel powered highway vehicles so purchased).

"(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed during the first quarter following the last quarter included in the claim.

"(3) SPECIAL RULE FOR GASOHOL CREDIT.—

"(A) IN GENERAL.—A claim may be filed for gasoline used to produce gasohol (as defined in section 4081(c)(1)) for any period—

"(i) for which $200 or more is payable by reason of subsection (b)(14), and

"(ii) which is not less than 1 week.

"(B) PAYMENT OF CLAIM.—Notwithstanding subsection (a), if the Secretary has not paid a claim filed pursuant to subparagraph (A) within 20 days of the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

"(e) USE ON A FARM FOR FARMING.—For purposes of subsection (b)(8)—

"(1) IN GENERAL.—Fuel shall be treated as used on a farm for farming purposes only if used—

"(A) in carrying on a trade or business,
"(B) on a farm situated in the United States, and
"(C) for farming purposes.

"(2) FARM.—The term 'farm' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

"(3) FARMING PURPOSES.—Fuel shall be treated as used for farming purposes only if used—

"(A) by the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator;

"(B) by the owner, tenant, or operator of a farm, in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only if such owner, tenant, or operator produced more than one-half of the commodity which he so treated during the period with respect to which claim is filed;

"(C) by the owner, tenant, or operator of a farm, in connection with—

"(i) the planting, cultivating, caring for, or cutting of trees, or

"(ii) the preparation (other than milling) of trees for market, incidental to farming operations; or

"(D) by the owner, tenant, or operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.

"(4) CERTAIN FARMING USE OTHER THAN BY OWNER, ETC.—In applying paragraph (3)(A) to a use on a farm for any purpose described in paragraph (3)(A) by any person other than the owner, tenant, or operator of such farm—

"(A) the owner, tenant, or operator of such farm shall be treated as the user and ultimate purchaser of the fuel, except that

"(B) if the person so using the fuel is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the fuel, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such fuel on a farm for farming purposes.

"(f) OFF-HIGHWAY BUSINESS USE.—For purposes of subsection (b)(9)—

"(1) IN GENERAL.—The term 'off-highway business use' means any use by a person in a trade or business of such person or in an activity of such person described in section 212 (relating to production of income) otherwise than as a fuel in a highway vehicle—

"(A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or

"(B) which, in the case of a highway vehicle owned by the United States, is used on the highway.

"(2) USES IN MOTORBOATS.—The term 'off-highway business use' does not include any use in a motorboat; except that such term shall include any use in—

"(A) a vessel employed in the fisheries or in the whaling business, and

"(B) for purposes of the tax imposed under section 4091, a motorboat in the active conduct of—

"(i) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or

"(ii) any other trade or business unless the motorboat is used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement or recreation.

"(g) QUALIFIED BUS TRANSPORTATION.—For purposes of subsection (b)(10)—

"(1) IN GENERAL.—Fuel is used in qualified bus transportation if it is used in an automobile bus while engaged in—

"(A) furnishing (for compensation) passenger land transportation available to the general public, or

"(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)).

"(2) LIMITATION IN THE CASE OF NONSCHEDULED INTERCITY OR LOCAL BUSES.—Paragraph (1)(A) shall not apply in respect of fuel used in any automobile bus while engaged in furnishing transportation which is not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

"(h) USE BY AN AIRCRAFT MUSEUM.—For purposes of subsection (b)(11)—

"(1) IN GENERAL.—Fuel is used by an aircraft museum if it is used in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in paragraph (2)(C).

"(2) AIRCRAFT MUSEUM.—For purposes of this subsection, the term 'aircraft museum' means an organization—

"(A) described in section 501(c)(3) which is exempt from income tax under section 501(a),

"(B) operated as a museum under charter by a State or the District of Columbia, and

"(C) operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.

"(i) USE IN A NONPURPOSE USE.—For purposes of subsection (b)(12), fuel is used in a nonpurpose use if—

"(1) tax was imposed by section 4041 on the sale thereof and the purchaser—

"(A) uses such fuel other than for the use for which it is sold, or

"(B) resells such fuel, or

"(2) tax was imposed by section 4081 on any gasoline blend stock or product commonly used as an additive in gasoline and the purchaser establishes that the ultimate use of such blend stock or product is not to produce gasoline.

"(j) ADVANCE REPAYMENT OF INCREASED DIESEL FUEL TAX TO ORIGINAL PURCHASERS OF DIESEL-POWERED AUTOMOBILES AND LIGHT TRUCKS.—

"(1) IN GENERAL.—Except as provided in subsection (d), the Secretary shall pay (without interest) to the original purchaser of any qualified diesel-powered highway vehicle an amount equal to the diesel fuel differential amount.

"(2) QUALIFIED DIESEL-POWERED HIGHWAY VEHICLE.—For purposes of this subsection, the term 'qualified diesel-powered highway vehicle' means any diesel-powered highway vehicle which—

"(A) has at least 4 wheels,

"(B) has a gross vehicle weight rating of 10,000 pounds or less, and

"(C) is registered for highway use in the United States under the laws of any State.

"(3) DIESEL FUEL DIFFERENTIAL AMOUNT.—For purposes of this subsection, the term 'diesel fuel differential amount' means—

"(A) except as provided in subparagraph (B), $102, or

"(B) in the case of a truck or van, $198.

"(4) ORIGINAL PURCHASER.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'original purchaser' means the first person to purchase the qualified diesel-powered vehicle for use other than resale.

"(B) EXCEPTION FOR CERTAIN PERSONS NOT SUBJECT TO FUELS TAX.—The term 'original purchaser' shall not include any State or local government (as defined in section 4221(d)(4)) or any nonprofit educational organization (as defined in section 4221(d)(5)).

"(C) TREATMENT OF DEMONSTRATION USE BY DEALER.—For purposes of subparagraph (A), use as a demonstrator by a dealer shall not be taken into account.

"(5) VEHICLES TO WHICH SUBSECTION APPLIES.—This subsection shall only apply to qualified diesel-powered highway vehicles originally purchased after January 1, 1985, and before January 1, 1995.

"(6) BASIS REDUCTION.—For the purposes of subtitle A, the basis of any qualified diesel-powered highway vehicle shall be reduced by the amount payable under this subsection with respect to such vehicle.

"(k) INCOME TAX CREDIT IN LIEU OF PAYMENT; OTHER SPECIAL RULES.—

"(1) INCOME TAX CREDIT IN LIEU OF PAYMENT.—

"(A) PERSONS NOT SUBJECT TO INCOME TAX.—Payment shall be made under this section only to—

"(i) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

"(ii) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a payment of a claim filed under paragraph (2) or (3) of subsection (d).

"(C) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

"For allowances of credit against the income tax imposed by subtitle A for fuel used by the purchaser in an exempt use, see section 34.

(2) APPLICABLE LAWS.—

"(A) IN GENERAL.—All provisions of law, including penalties, applicable in respect of the tax with respect to which a payment is claimed under this section shall, insofar as applicable and not inconsistent with this section, apply in respect of such payment to the same extent as if such payment constituted a refund of overpayments of such tax.

"(B) EXAMINATION OF BOOKS AND WITNESSES.—For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602(a) (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

"(3) COORDINATION WITH SECTION 6416, ETC.—No amount shall be payable under this section to any person with respect to any fuel if the Secretary determines that the amount of tax for which such payment is sought was not included in the price paid by such person for such fuel. The amount which would (but for this sentence) be payable under this section with respect to any fuel shall be reduced by any other amount which the Secretary determines is payable under this section, or is refundable under any other provision of this title, to any person with respect to such fuel.

"(4) REGULATIONS.—The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

"(l) FUELS—For purposes of this section, the terms 'gasoline', 'diesel fuel', and 'aviation fuel' have the respective meanings given such terms by sections 4082 and 4092.

"(m) TERMINATION.—Except as otherwise provided in this section, this section shall not apply to any liquid purchased after September 30, 1999. The preceding sentence shall not apply to taxes attributable to any Leaking Underground Storage Tank Trust Fund financing rate."

SEC. 4803. AUTHORITY TO PROVIDE EXCEPTIONS FROM INFORMATION REPORTING WITH RESPECT TO DIESEL FUEL AND AVIATION FUEL.

(a) RETURNS BY PRODUCERS AND IMPORTERS.—Subparagraph (A) of section 4093(c)(4) (relating to returns by producers and importers) is amended by striking "Each producer" and inserting "Except as provided by the Secretary by regulations, each producer".

(b) RETURNS BY PURCHASERS.—Subparagraph (C) of section 4093(c)(4) (relating to returns by purchasers) is amended by striking "Each person" and inserting "Except as provided by the Secretary by regulations, each person".

SEC. 4804. TECHNICAL AND CONFORMING AMENDMENTS.

(1) Sections 6421 and 6427 are hereby repealed.

(2) Section 34 is amended to read as follows:

"SEC. 34. EXCISE TAXES ON FUEL USED FOR EXEMPT PURPOSES.

"There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the excess of—

"(1) the aggregate amount payable to the taxpayer under section 6420 (determined without regard to section 6420(k)(1)) with respect to—

"(A) exempt uses (as defined in section 6420(b)) during such taxable year, and

"(B) qualified diesel-powered highway vehicles purchased during such taxable year, over

"(2) the portion of such amount for which a claim payable under section 6420(d) is timely filed."

(3) Subsection (c) of section 40 is amended by striking "subsection (b)(2), (k), or (m)" and inserting "subsection (a)(4) or (b)(4)"

(4) Paragraph (2) of section 451(e) is amended by striking "section 6420(c)(3)" and inserting "section 6420(e)(3)".

(5) Clause (i) of section 1274(c)(3)(A) is amended by striking "section 6420(c)(2)" and inserting "section 6420(e)(2)".

(6) Sections 874(a) and 1366(f)(1) are each amended by striking "gasoline and special" and inserting "taxable".

(7) Paragraph (2) of section 882(c) is amended by striking "gasoline" and inserting "taxable fuels".

(8) Subsection (b) of section 4042 is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(9) Subsection (b) of section 4082 is amended by striking "special fuels referred to in section 4041" and inserting "special motor fuels referred to in section 4041(a)".

(10) Section 4083 is amended to read as follows:

"SEC. 4083. CROSS REFERENCE.

"For provision allowing a credit or refund for gasoline used for exempt purposes, see section 6420."

(11) Subsections (c)(2) and (d)(2) of section 4091 are each amended by striking "section 6427(f)(1)" and inserting "section 6420(b)(14)".

(12) Paragraph (1) of section 4093(c) is amended by striking "by the purchaser" and all that follows and inserting "by the

purchaser in an exempt use (as defined in section 6420(b) other than paragraph (14) thereof)."

(13) Subparagraph (C) of section 4093(c)(2) is amended by striking "section 6427(b)(2)(A)" and inserting "section 6420(c)(3)(A)".

(14) Clause (i) of section 4093(c)(4)(C) is amended to read as follows:

"(i) whether such use was an exempt use (as defined in section 6420(b)) and the amount of fuel so used,".

(15) Section 4093 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) USE BY PRODUCER OR IMPORTER.—If any producer or importer uses any taxable fuel, then such producer or importer shall be liable for tax under section 4091 in the same manner as if such fuel were sold by him for such use."

(16) Subsection (f) of section 4093, as redesignated by paragraph (15), is amended to read as follows:

"(e) CROSS REFERENCE.—

"For provision allowing a credit or refund for fuel used for exempt purposes, see section 6420."

(17) Section 6206 is amended to read as follows:

"SEC. 6206. SPECIAL RULES APPLICABLE TO EXCESSIVE FUEL TAX REFUND CLAIMS.

"Any portion of a payment made under section 6420 which constitutes an excessive amount (as defined in section 6675(b)), and any civil penalty provided by section 6675, may be assessed and collected as if—

"(1) it were a tax imposed by the section to which the claim relates, and

"(2) the person making the claim were liable for such tax. The period for assessing any such portion, and for assessing any such penalty, shall be 3 years from the last day prescribed for filing the claim under section 6420."

(18) Subparagraph (A) of section 6416(a)(2) is amended by striking "(relating to tax on special fuels)" and inserting "(relating to special motor fuels and noncommercial aviation gasoline)".

(19) Paragraph (2) of section 6416(b) is amended—

(A) in the matter preceding subparagraph (A) by striking "subsection (a) or (d) of section 4041" and inserting "section 4041(a)", and

(B) in subparagraph (F) by striking "special fuels referred to in section 4041" and inserting "special motor fuels referred to in section 4041(a)".

(20) Paragraph (9) of section 6504 is amended to read as follows:

"(9) Assessments to recover excessive amounts paid under section 6420 (relating to certain taxes on fuels used for exempt purposes) and assessments of civil penalties under section 6675 for excessive claims under section 6420, see section 6206."

(21) Subsection (h) of section 6511 is amended by striking paragraphs (5) and (6), by redesignating paragraph (7) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

"(5) For limitations in the case of payments under section 6420 (relating to certain taxes on fuels used for exempt purposes), see section 6420(d)."

(22) Subsection (c) of section 6612 is amended by striking "6420 (relating to payments in the case of gasoline used on the farm for farming purposes) and 6421 (relating to payments in the case of gasoline used for certain nonhighway purposes or by local transit systems)" and inserting "and 6420 (relating to certain taxes on fuels used for exempt purposes)".

(23) Subsection (a) of section 6675 is amended by striking "section 6420 (relating to gasoline used on farms), 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), or 6427 (relating to fuels not used for taxable purposes)" and inserting "section 6420 (relating to certain taxes on fuels used for exempt purposes)".

(24) Paragraph (1) of section 6675(b) is amended by striking ", 6421, or 6427, as the case may be,".

(25) Section 7210 is amended by striking "sections 6420(e)(2), 6421(g)(2), 6427(j)(2)" and inserting "sections 6420(k)(3)(B)".

(26) Section 7603, subsections (b) and (c)(2) of section 7604, section 7605, and 7610(c) are each amended by striking "section 6420(e)(2), 6421(g)(2), 6427(j)(2)," each place it appears and inserting "section 6420(k)(2)(B)".

(27) Sections 7605 and 7609(c)(1) are each amended by striking "section 6420(e)(2), 6421(g)(2), or 6427(j)(2)" and inserting "section 6420(k)(2)(B)".

(28) Paragraph (1) of section 9502(b) is amended by striking "subsections (c) and (e) of section 4041 (taxes on aviation fuel)" and inserting "section 4041(b) (relating to taxes on noncommercial aviation gasoline)".

(29) Paragraph (2) of section 9502(d) is amended by striking "fuel used in aircraft" and all that follows and inserting "fuel used in aircraft, under section 6420 (relating to certain taxes on fuels used for exempt purposes)."

(30) Paragraph (1) of section 9502(e) is amended by striking "4041(c)(1) and".

(31) Subparagraph (A) of section 9503(b)(1) is amended to read as follows:

"(A) section 4041 (relating to special motor fuels and noncommercial aviation gasoline),".

(32) Paragraph (4) of section 9503(b) is amended to read as follows:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), the taxes imposed by sections 4041, 4081, and 4091 shall be taken into account only to the extent attributable to the Highway Trust Fund financing rates under such sections."

(33)(A) Clause (i) of section 9503(c)(2)(A) is amended to read as follows:

"(i) the amounts paid before July 1, 1996, under section 6420 (relating to certain taxes on fuels used for exempt purposes) on the basis of claims filed for periods ending before October 1, 1995, and".

(B) For purposes of section 9503(c)(2)(A)(i) of the Internal Revenue Code of 1986, the reference to section 6420 shall be treated as including a reference to sections 6420, 6421, and 6427 of such Code as in effect before the enactment of this Act.

(34) Clause (ii) of section 9503(c)(2)(A) is amended by striking "gasoline, special fuels, and lubricating oil" each place it appears and inserting "taxable fuels".

(35) Subparagraph (D) of section 9503(c)(4) is amended by striking "section 4041(a)(2)" and inserting "section 4041(a)".

(36) Subparagraph (A) of section 9503(e)(5) is amended by striking "section 6427(g)" and inserting "section 6420(j)".

(37) Paragraph (1) of section 9508(b) is amended to read as follows:

"(1) taxes received in the Treasury under section 4041 (relating to special motor fuels and noncommercial aviation gasoline) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rates applicable under such section,".

(38) Subparagraph (A) of section 9508(c)(2) is amended by striking "equivalent to—" and all that follows and inserting the following: "equivalent to—

"(i) amounts paid under section 6420 (relating to certain taxes on fuels used for exempt purposes), and

"(ii) credits allowed under section 34,

with respect to so much of the taxes imposed by sections 4041, 4081, and 4091 as are attributable to the Leaking Underground Storage Tank Trust Fund financing rates applicable under such sections."

(39) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 34 and inserting the following:

"Sec. 34. Excise taxes on fuels used for exempt purposes."

(40) The table of sections for subchapter B of chapter 31 is amended by striking the item relating to section 4041 and inserting the following:

"Sec. 4041. Special motor fuels and noncommercial aviation gasoline."

(41) The table of sections for subpart A of part III of subchapter A of chapter 32 is amended by striking the item relating to section 4083 and inserting the following:

"Sec. 4083. Cross reference."

(42) The table of sections for subchapter B of chapter 65 is amended by striking the items relating to sections 6421 and 6427 and by striking the item relating to section 6420 and inserting the following new item:

"Sec. 6420. Certain taxes on fuels used for exempt purposes."

(43) The table of sections for subchapter A of chapter 63 is amended by striking the item relating to section 6206 and inserting the following new item:

"Sec. 6206. Special rules applicable to excessive fuel tax refund claims."

SEC. 4805. EFFECTIVE DATE.

The amendments made by this part shall take effect on January 1, 1993.

PART II—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER

SEC. 4811. CREDIT OR REFUND FOR IMPORTED BOTTLED DISTILLED SPIRITS RETURNED TO DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Paragraph (1) of section 5008(c) (relating to distilled spirits returned to bonded premises) is amended by striking "withdrawn from bonded premises on payment or determination of tax" and inserting "on which tax has been determined or paid".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4812. AUTHORITY TO CANCEL OR CREDIT EXPORT BONDS WITHOUT SUBMISSION OF RECORDS.

(a) IN GENERAL.—Subsection (c) of section 5175 (relating to export bonds) is amended by striking "on the submission of" and all that follows and inserting "if there is such proof of exportation as the Secretary may by regulations require."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4813. REPEAL OF REQUIRED MAINTENANCE OF RECORDS ON PREMISES OF DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Subsection (c) of section 5207 (relating to records and reports) is amended by striking "shall be kept on the premises where the operations covered by the record are carried on and".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4814. FERMENTED MATERIAL FROM ANY BREWERY MAY BE RECEIVED AT A DISTILLED SPIRITS PLANT.

(a) IN GENERAL.—Paragraph (2) of section 5222(b) (relating to production, receipt, removal, and use of distilling materials) is amended to read as follows:

"(2) beer conveyed without payment of tax from brewery premises, beer which has been lawfully removed from brewery premises upon determination of tax, or".

(b) CLARIFICATION OF AUTHORITY TO PERMIT REMOVAL OF BEER WITHOUT PAYMENT OF TAX FOR USE AS DISTILLING MATERIAL.—Section 5053 (relating to exemptions) is amended by redesignating subsection (f) as subsection (i) and by inserting after subsection (e) the following new subsection:

"(f) REMOVAL FOR USE AS DISTILLING MATERIAL.—Subject to such regulations as the Secretary may prescribe, beer may be removed from a brewery without payment of tax to any distilled spirits plant for use as distilling material."

(c) CLARIFICATION OF REFUND AND CREDIT OF TAX.—Section 5056 (relating to refund and credit of tax, or relief from liability) is amended—

(1) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) BEER RECEIVED AT A DISTILLED SPIRITS PLANT.—Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under regulations as the Secretary may prescribe, if such beer is received on the bonded premises of a distilled spirits plant pursuant to the provisions of section 5222(b)(2), for use in the production of distilled spirits.", and

(2) by striking "or rendering unmerchantable" in subsection (d) (as so redesignated) and inserting "rendering unmerchantable, or receipt on the bonded premises of a distilled spirits plant".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4815. REPEAL OF REQUIREMENT FOR WHOLESALE DEALERS IN LIQUORS TO POST SIGN.

(a) IN GENERAL.—Section 5115 (relating to sign required on premises) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 5681 is amended by striking ", and every wholesale dealer in liquors," and by striking "section 5115(a) or".

(2) Subsection (c) of section 5681 is amended—

(A) by striking "or wholesale liquor establishment, on which no sign required by section 5115(a) or" and inserting "on which no sign required by", and

(B) by striking "or wholesale liquor establishment, or who" and inserting "or who".

(3) The table of sections for subpart D of part II of subchapter A of chapter 51 is amended by striking the item relating to section 5115.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4816. REFUND OF TAX TO WINE RETURNED TO BOND NOT LIMITED TO UNMERCHANTABLE WINE.

(a) IN GENERAL.—Subsection (a) of section 5044 (relating to refund of tax on unmerchantable wine) is amended by striking "as unmerchantable".

(b) CONFORMING AMENDMENTS.—

(1) Section 5361 is amended by striking "unmerchantable".

(2) The section heading for section 5044 is amended by striking "UNMERCHANTABLE".

(3) The item relating to section 5044 in the table of sections for subpart C of part I of subchapter A of chapter 51 is amended by striking "unmerchantable".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4817. USE OF ADDITIONAL AMELIORATING MATERIAL IN CERTAIN WINES.

(a) IN GENERAL.—Subparagraph (D) of section 5384(b)(2) (relating to ameliorated fruit and berry wines) is amended by striking "loganberries, currants, or gooseberries," and inserting "any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry)".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4818. DOMESTICALLY-PRODUCED BEER MAY BE WITHDRAWN FREE OF TAX FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.

(a) IN GENERAL.—Section 5053 (relating to exemptions) is amended by inserting after subsection (f) the following new subsection:

"(g) REMOVALS FOR USE OF FOREIGN EMBASSIES, LEGATIONS, ETC.—

"(1) IN GENERAL.—Subject to such regulations as the Secretary may prescribe—

"(A) beer may be withdrawn from the brewery without payment of tax for transfer to any customs bonded warehouse for entry pending withdrawal therefrom as provided in subparagraph (B), and

"(B) beer entered into any customs bonded warehouse under subparagraph (A) may be withdrawn for consumption in the United States by, and for the official and family use of, such foreign governments, organizations, and individuals as are entitled to withdraw imported beer from such warehouses free of tax.

Beer transferred to any customs bonded warehouse under subparagraph (A) shall be entered, stored, and accounted for in such warehouse under such regulations and bonds as the Secretary may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported beer.

"(2) OTHER RULES TO APPLY.—Rules similar to the rules of paragraphs (2) and (3) of section 5362(e) of such section shall apply for purposes of this subsection."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4819. BEER MAY BE WITHDRAWN FREE OF TAX FOR DESTRUCTION.

(a) IN GENERAL.—Section 5053 is amended by inserting after subsection (g) the following new subsection:

"(h) REMOVALS FOR DESTRUCTION.—Subject to such regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for destruction."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4820. AUTHORITY TO ALLOW DRAWBACK ON EXPORTED BEER WITHOUT SUBMISSION OF RECORDS.

(a) IN GENERAL.—The first sentence of section 5055 (relating to drawback of tax on beer) is amended by striking "found to have been paid" and all that follows and inserting "paid on such beer if there is such proof of exportation as the Secretary may by regulations require."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4821. TRANSFER TO BREWERY OF BEER IMPORTED IN BULK WITHOUT PAYMENT OF TAX.

(a) IN GENERAL.—Part II of subchapter G of chapter 51 is amended by adding at the end thereof the following new section:

"SEC. 5418. BEER IMPORTED IN BULK.

"Beer imported or brought into the United States in bulk containers may, under such regulations as the Secretary may prescribe, be withdrawn from customs custody and transferred in such bulk containers to the premises of a brewery without payment of the internal revenue tax imposed on such beer. The proprietor of a brewery to which such beer is transferred shall become liable for the tax on the beer withdrawn from customs custody under this section upon release of the beer from customs custody, and the importer, or the person bringing such beer into the United States, shall thereupon be relieved of the liability for such tax."

(b) CLERICAL AMENDMENT.—The table of sections for such part II is amended by adding at the end thereof the following new item:

"Sec. 5418. Beer imported in bulk."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 180th day after the date of the enactment of this Act.

PART III—OTHER EXCISE TAX PROVISIONS

SEC. 4831. AUTHORITY TO GRANT EXEMPTIONS FROM REGISTRATION REQUIREMENTS.

(a) IN GENERAL.—The first sentence of section 4222 (relating to registration) is amended to read as follows: "Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article by or to any person who is required by the Secretary to be registered under this section and who is not so registered."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales after the 180th day after the date of the enactment of this Act.

SEC. 4832. SMALL MANUFACTURERS EXEMPT FROM FIREARMS EXCISE TAX.

(a) IN GENERAL.—Section 4182 (relating to exemptions), is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) SMALL MANUFACTURERS, ETC.—

"(1) IN GENERAL.—The tax imposed by section 4181 shall not apply to any article described in such section if manufactured, produced, or imported by a manufacturer, producer, or importer who manufactures, produces, or imports less than 50 of such articles during the calendar year.

"(2) CONTROLLED GROUP.—Persons who are members of the same controlled group of corporations shall be treated as 1 manufacturer, producer, or importer. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in such section.".

(b) EFFECTIVE DATE; REFUNDS.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 1983.

(2) WAIVER OF STATUTE OF LIMITATIONS.—In the case of any taxable year ending before the date of the enactment of this Act—

(A) the period for claiming a credit or refund of any overpayment of tax resulting from the application of the amendments made by this section shall not expire before the date which is 1 year after the date of the enactment of this Act, and

(B) if, after the application of subparagraph (A), credit or refund of any overpayment of tax resulting from the application of the amendments made by this section is prevented at any time before the close of such 1-year period by the operation of any law or rule of law (including res judicata), credit or refund of such overpayment (to the extent attributable to the application of the amendments made by this section) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

SEC. 4833. REPEAL OF EXPIRED PROVISIONS.

(a) PIGGY-BACK TRAILERS.—Section 4051 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) DEEP SEABED MINING.—

(1) Subchapter F of chapter 36 (relating to tax on removal of hard mineral resources from deep seabed) is hereby repealed.

(2) The table of subchapters for chapter 36 is amended by striking the item relating to subchapter F.

SEC. 4834. EXEMPTION FOR TRANSPORTATION ON CERTAIN FERRIES.

(a) GENERAL RULE.—Subparagraph (B) of section 4472(1) (relating to exception for certain voyages on passenger vessels) is amended to read as follows:

"(B) EXCEPTION FOR CERTAIN VOYAGES.—The term 'covered voyage' shall not include—

"(i) a voyage of a passenger vessel of less than 12 hours between 2 ports in the United States, and

"(ii) a voyage of less than 12 hours on a ferry between a port in the United States and a port outside the United States.

For purposes of the preceding sentence, the term 'ferry' means any vessel if normally no more than 50 percent of the passengers on any voyage of such vessel return to the port where such voyage began on the 1st return of such vessel to such port."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to voyages beginning after December 31, 1989; except that—

(1) no refund of any tax paid before the date of the enactment of this Act shall be made by reason of such amendment, and

(2) any tax collected from the passenger before the date of the enactment of this Act shall be remitted to the United States.

SEC. 4835. APPLICATION OF CERTAIN TAXES TO CERTAIN BUSINESS AIRCRAFT.

(a) IN GENERAL.—Subsection (a) of section 4282 (relating to transportation by air for other members of affiliated group) is amended by adding at the end the following new sentence: "The determination under paragraph (2) shall be made on a per flight basis."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle I—Administrative Provisions

PART I—GENERAL PROVISIONS

SEC. 4901. SIMPLIFICATION OF EMPLOYMENT TAXES ON DOMESTIC SERVICES.

(a) THRESHOLD REQUIREMENT FOR SOCIAL SECURITY TAXES.—

(1) Subparagraph (B) of section 3121(a)(7) (defining wages) is amended to read as follows:

"(B) cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such year by the employer to the employee for such service is less than $300. As used in this subparagraph, the term 'domestic service in a private home of the employer' does not include service described in subsection (g)(5);"

(2) Subparagraph (B) of section 209(a)(6) of the Social Security Act is amended to read as follows:

"(B) Cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such year by the employer to the employee for such service is less than $300. As used in this subparagraph, the term 'domestic service in a private home of the employer' does not include service described in section 210(f)(5)."

(3) The second sentence of section 3102(a) is amended—

(A) by striking "calendar quarter" each place it appears and inserting "calendar year", and

(B) by striking "$50" and inserting "$300".

(b) COORDINATION OF COLLECTION OF DOMESTIC SERVICE EMPLOYMENT WITH COLLECTION OF INCOME TAXES.—

(1) IN GENERAL.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by adding at the end thereof the following new section:

"SEC. 3510. COORDINATION OF COLLECTION OF DOMESTIC SERVICE EMPLOYMENT TAXES WITH COLLECTION OF INCOME TAXES.

"(a) GENERAL RULE.—Except as otherwise provided in this section—

"(1) returns with respect to domestic service employment taxes shall be made on a calendar year basis,

"(2) any such return for any calendar year shall be filed on or before the 15th day of the fourth month following the close of the employer's taxable year which begins in such calendar year, and

"(3) no requirement to make deposits (or to pay installments under section 6157) shall apply with respect to such taxes.

"(b) DOMESTIC SERVICE EMPLOYMENT TAXES SUBJECT TO ESTIMATED TAX PROVISIONS.—

"(1) IN GENERAL.—Solely for purposes of section 6654, domestic service employment taxes imposed with respect to any calendar year shall be treated as a tax imposed by chapter 2 for the taxable year of the employer which begins in such calendar year.

"(2) ANNUALIZATION.—Under regulations prescribed by the Secretary, appropriate adjustments shall be made in the application of section 6654(d)(2) in respect of the amount treated as tax under paragraph (1).

"(3) TRANSITIONAL RULE.—For purposes of applying section 6654 to a taxable year beginning in 1992, the amount referred to in clause (ii) of section 6654(d)(1)(B) shall be increased by 90 percent of the amount treated as tax under paragraph (1) for such taxable year.

"(c) DOMESTIC SERVICE EMPLOYMENT TAXES.—For purposes of this section, the term 'domestic service employment taxes' means—

"(1) any taxes imposed by chapter 21 or 23 on remuneration paid for domestic service in a private home of the employer, and

"(2) any amount withheld from such remuneration pursuant to an agreement under section 3402(p).

For purposes of this subsection, the term 'domestic service in a private home of the employer' does not include service described in section 3121(g)(5).

"(d) EXCEPTION WHERE EMPLOYER LIABLE FOR OTHER EMPLOYMENT TAXES.—To the extent provided in regulations prescribed by the Secretary, this section shall not apply to any employer for any calendar year if such employer is liable for any tax under this subtitle with respect to remuneration for services other than domestic service in a private home of the employer.

"(e) GENERAL REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section. Such regulations may treat domestic service employment taxes as taxes imposed by chapter 1 for purposes of coordinating the assessment and collection of such em-

ployment taxes with the assessment and collection of domestic employers' income taxes.

"(f) AUTHORITY TO ENTER INTO AGREEMENTS TO COLLECT STATE UNEMPLOYMENT TAXES.—

"(1) IN GENERAL.—The Secretary is hereby authorized to enter into an agreement with any State to collect, as the agent of such State, such State's unemployment taxes imposed on remuneration paid for domestic service in a private home of the employer. Any taxes to be collected by the Secretary pursuant to such an agreement shall be treated as domestic service employment taxes for purposes of this section.

"(2) TRANSFERS TO STATE ACCOUNT.—Any amount collected under an agreement referred to in paragraph (1) shall be transferred by the Secretary to the account of the State in the Unemployment Trust Fund.

"(3) SUBTITLE F MADE APPLICABLE.—For purposes of subtitle F, any amount required to be collected under an agreement under paragraph (1) shall be treated as a tax imposed by chapter 23.

"(4) STATE.—For purposes of this subsection, the term 'State' has the meaning given such term by section 3306(j)(1)."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 25 is amended by adding at the end thereof the following:

"Sec. 3510. Coordination of collection of domestic service employment taxes with collection of income taxes."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration paid in calendar years after 1992.

SEC. 4902. USE OF REPRODUCTIONS OF RETURNS STORED IN DIGITAL IMAGE FORMAT.

(a) IN GENERAL.—Paragraph (2) of section 6103(p) (relating to procedure and recordkeeping) is amended by adding at the end thereof the following new subparagraph:

"(D) REPRODUCTION FROM DIGITAL IMAGES.—For purposes of this paragraph, the term 'reproduction' includes a reproduction from digital images."

(b) STUDY.—The Comptroller General of the United States shall conduct a study of available digital image technology for the purpose of determining the extent to which reproductions of documents stored using that technology accurately reflect the data on the original document and the appropriate period for retaining the original document. Not later than 1 year after the date of the enactment of this Act, a report on the results of such study shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 4903. REPEAL OF AUTHORITY TO DISCLOSE WHETHER PROSPECTIVE JUROR HAS BEEN AUDITED.

(a) IN GENERAL.—Subsection (h) of section 6103 (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by striking paragraph (5) and by redesignating paragraph (6) as paragraph (5).

(b) CONFORMING AMENDMENT.—Paragraph (4) of section 6103(p) is amended by striking "(h)(6)" each place it appears and inserting "(h)(5)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to judicial proceedings pending on, or commenced after, the date of the enactment of this Act.

SEC. 4904. REPEAL OF SPECIAL AUDIT PROVISIONS FOR SUBCHAPTER S ITEMS.

(a) GENERAL RULE.—Subchapter D of chapter 63 (relating to tax treatment of subchapter S items) is hereby repealed.

(b) CONSISTENT TREATMENT REQUIRED.—Section 6037 (relating to return of S corporation) is amended by adding at the end thereof the following new subsection:

"(c) SHAREHOLDER'S RETURN MUST BE CONSISTENT WITH CORPORATE RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.—

"(1) IN GENERAL.—A shareholder of an S corporation shall, on such shareholder's return, treat a subchapter S item in a manner which is consistent with the treatment of such item on the corporate return.

"(2) NOTIFICATION OF INCONSISTENT TREATMENT.—

"(A) IN GENERAL.—In the case of any subchapter S item, if—

"(i)(I) the corporation has filed a return but the shareholder's treatment on his return is (or may be) inconsistent with the treatment of the item on the corporate return, or

"(II) the corporation has not filed a return, and

"(ii) the shareholder files with the Secretary a statement identifying the inconsistency,

paragraph (1) shall not apply to such item.

"(B) SHAREHOLDER RECEIVING INCORRECT INFORMATION.—A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a subchapter S item if the shareholder—

"(i) demonstrates to the satisfaction of the Secretary that the treatment of the subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation, and

"(ii) elects to have this paragraph apply with respect to that item.

"(3) EFFECT OF FAILURE TO NOTIFY.—In any case—

"(A) described in subparagraph (A)(i)(I) of paragraph (2), and

"(B) in which the shareholder does not comply with subparagraph (A)(ii) of paragraph (2),

any adjustment required to make the treatment of the items by such shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of mathematical or clerical errors and assessed according to section 6213(b)(1). Paragraph (2) of section 6213(b) shall not apply to any assessment referred to in the preceding sentence.

"(4) SUBCHAPTER S ITEM.—For purposes of this subsection, the term 'subchapter S item' means any item of an S corporation to the extent that regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more ap-

propriately determined at the corporation level than at the shareholder level.

"(5) ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.—

"For addition to tax in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68."

(c) CONFORMING AMENDMENTS.—

(1) Section 1366 is amended by striking subsection (g).

(2) Subsection (b) of section 6233 is amended to read as follows:

"(b) SIMILAR RULES IN CERTAIN CASES.—If a partnership return is filed for any taxable year but it is determined that there is no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply."

(3) The table of subchapters for chapter 63 is amended by striking the item relating to subchapter D.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 4905. CLARIFICATION OF STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Subsection (a) of section 6501 (relating to limitations on assessment and collection) is amended by adding at the end thereof the following new sentence: "For purposes of this chapter, the term 'return' means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 4906. CERTAIN NOTICES DISREGARDED UNDER PROVISION INCREASING INTEREST RATE ON LARGE CORPORATE UNDERPAYMENTS.

(a) GENERAL RULE.—Subparagraph (B) of section 6621(c)(2) (defining applicable date) is amended by adding at the end thereof the following new clause:

"(iii) EXCEPTION FOR LETTERS OR NOTICES INVOLVING SMALL AMOUNTS.—For purposes of this paragraph, any letter or notice shall be disregarded if the amount of the deficiency or proposed deficiency (or the assessment or proposed assessment) set forth in such letter or notice is not greater than $100,000 (determined by not taking into account any interest, penalties, or additions to tax)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining interest for periods after December 31, 1990.

PART II—TAX COURT PROCEDURES

SEC. 4911. OVERPAYMENT DETERMINATIONS OF TAX COURT.

(a) APPEAL OF ORDER.—Paragraph (2) of section 6512(b) (relating to jurisdiction to enforce) is amended by adding at the end the following new sentence: "An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) DENIAL OF JURISDICTION REGARDING CERTAIN CREDITS AND REDUCTIONS.—Subsection (b) of section 6512 (relating to overpayment determined by Tax Court) is amended by adding at the end the following new paragraph:

"(4) DENIAL OF JURISDICTION REGARDING CERTAIN CREDITS AND REDUCTIONS.—The Tax Court shall have no jurisdiction under this subsection to restrain or review any credit or reduction made by the Secretary under section 6402."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4912. AWARDING OF ADMINISTRATIVE COSTS.

(a) RIGHT TO APPEAL TAX COURT DECISION.—Subsection (f) of section 7430 (relating to right of appeal) is amended by adding at the end the following new paragraph:

"(3) APPEAL OF TAX COURT DECISION.—An order of the Tax Court disposing of a petition under paragraph (2) shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) PERIOD FOR APPLYING TO IRS FOR COSTS.—Subsection (b) of section 7430 (relating to limitations) is amended by adding at the end the following new paragraph:

"(5) PERIOD FOR APPLYING TO IRS FOR ADMINISTRATIVE COSTS.—An award may be made under subsection (a) by the Internal Revenue Service for reasonable administrative costs only if the prevailing party files an application with the Internal Revenue Service for such costs before the 91st day after the date on which the final decision of the Internal Revenue Service as to the determination of the tax, interest, or penalty is mailed to such party."

(c) PERIOD FOR PETITIONING OF TAX COURT FOR REVIEW OF DENIAL OF COSTS.—Paragraph (2) of section 7430(f) (relating to right of appeal) is amended—

(1) by striking "appeal to" and inserting "the filing of a petition for review with", and

(2) by adding at the end the following new sentence: "If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be initiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to civil actions or proceedings commenced after the date of the enactment of this Act.

SEC. 4913. REDETERMINATION OF INTEREST PURSUANT TO MOTION.

(a) IN GENERAL.—Paragraph (3) of section 7481(c) (relating to jurisdiction over interest determinations) is amended by striking "petition" and inserting "motion".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 4914. APPLICATION OF NET WORTH REQUIREMENT FOR AWARDS OF LITIGATION COSTS.

(a) IN GENERAL.—Paragraph (4) of section 7430(c) (defining prevailing party) is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULES FOR APPLYING NET WORTH REQUIREMENT.—In applying the requirements of section 2412(d)(2)(B) of title 28, United States Code, for purposes of subparagraph (A)(iii) of this paragraph—

"(i) the net worth limitation in clause (i) of such section shall apply to—

"(I) an estate but shall be determined as of the date of the decedent's death, and

"(II) a trust but shall be determined as of the last day of the taxable year involved in the proceeding, and

"(ii) individuals filing a joint return shall be treated as 1 individual for purposes of clause (i) of such section, except in the case of a spouse relieved of liability under section 6013(e)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

PART III—AUTHORITY FOR CERTAIN COOPERATIVE AGREEMENTS

SEC. 4921. COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES.

(a) GENERAL RULE.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7524. COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES.

"(a) AUTHORIZATION OF AGREEMENTS.—The Secretary is hereby authorized to enter into cooperative agreements with State tax authorities for purposes of enhancing joint tax administration. Such agreements may provide for—

"(1) joint filing of Federal and State income tax returns,

"(2) single processing of such returns,

"(3) joint collection of taxes (other than Federal income taxes), and

"(4) such other provisions as may enhance joint tax administration.

"(b) SERVICES ON REIMBURSABLE BASIS.—Any agreement under subsection (a) may require reimbursement for services provided by either party to the agreement.

"(c) AVAILABILITY OF FUNDS.—Any funds appropriated for purposes of the administration of this title shall be available for pur-

poses of carrying out the Secretary's responsibility under an agreement entered into under subsection (a). Any reimbursement received pursuant to such an agreement shall be credited to the amount so appropriated.

"(d) STATE TAX AUTHORITY.—For purposes of this section, the term 'State tax authority' means agency, body, or commission referred to in section 6103(d)(1)."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7524. Cooperative agreements with State tax authorities."

PART IV—OTHER PROVISIONS

SEC. 4931. EXTENSION OF AUTHORITY FOR UNDERCOVER OPERATIONS.

(a) 3-YEAR EXTENSION.—

(1) IN GENERAL.—Subsection (c) of section 7608 (relating to undercover operations) is amended by adding at the end thereof the following new paragraph:

"(6) TERMINATION.—The provisions of this subsection shall cease to apply on and after September 1, 1995; and all amounts expended pursuant to this subsection shall be recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before such date."

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 7601(c) of the Anti-Drug Abuse Act of 1988 is amended by striking all that follows "this Act" and inserting a period.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on January 1, 1992.

(b) ENHANCED OVERSIGHT.—

(1) ADDITIONAL INFORMATION REQUIRED IN REPORTS TO CONGRESS.—Subparagraph (B) of section 7608(c)(4) is amended—

(A) by striking "preceding the period" in clause (ii),

(B) by striking "and" at the end of clause (ii), and

(C) by striking clause (iii) and inserting the following:

"(iii) the number, by programs, of undercover investigative operations closed in the 1-year period for which such report is submitted, and

"(iv) the following information with respect to each undercover investigative operation pending as of the end of the 1-year period for which such report is submitted or closed during such 1-year period—

"(I) the date the operation began and the date of the certification referred to in the last sentence of paragraph (1),

"(II) the total expenditures under the operation and the amount and general use of the proceeds from the operation,

"(III) a description of the operation including the potential violation being investigated, and

"(IV) the results of the operation including the results of criminal proceedings."

(2) AUDITS REQUIRED WITHOUT REGARD TO AMOUNTS INVOLVED.—Subparagraph (C) of section 7608(c)(5) is amended to read as follows:

"(C) UNDERCOVER INVESTIGATIVE OPERATION.—The term 'undercover investigative operation' means any undercover investigative operation of the Service; except that, for purposes of subparagraphs (A) and (C) of paragraph (4), such term only includes an operation which is exempt from section 3302 or 9102 of title 31, United States Code."

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

SEC. 4932. DISCLOSURE OF RETURNS ON CASH TRANSACTIONS.

(a) GENERAL RULE.—Subsection (l) of section 6103 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end thereof the following new paragraph:

"(13) DISCLOSURE OF RETURNS FILED UNDER SECTION 6050I.—The Secretary may, upon written request, disclose to officers and employees of—

"(A) any Federal agency,

"(B) any agency of a State or local government, or

"(C) any agency of the government of a foreign country,

information contained on returns filed under section 6050I. Any such disclosure shall be made on the same basis, and subject to the same conditions, as apply to disclosures of information on reports filed under section 5313 of title 31, United States Code; except that no disclosure under this paragraph shall be made for purposes of the administration of any tax law."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (i) of section 6103 is amended by striking paragraph (8).

(2) Subparagraph (A) of section 6103(p)(3) is amended—

(A) by striking "(7)(A)(ii), or (8)" and inserting "or (7)(A)(ii)", and

(B) by striking "or (12)" and inserting "(12), or (13)".

(3) The material preceding subparagraph (A) of section 6103(p)(4) is amended—

(A) by striking "(5), or (8)" and inserting "or (5)",

(B) by striking "(i)(3)(B)(i) or (8)" and inserting "(i)(3)(B)(i)", and

(C) by striking "or (12)" and inserting "(12), or (13)".

(4) Clause (ii) of section 6103(p)(4)(F) is amended—

(A) by striking "(5), or (8)" and inserting "or (5)", and

(B) by striking "or (12)" and inserting "(12), or (13)".

(5) Paragraph (2) of section 7213(a) is amended by striking "or (12)" and inserting "(12), or (13)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4933. ALTERNATIVE METHODS OF VERIFYING RETURNS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 61 is amended by adding at the end the following new section:

"SEC. 6066. AUTHORITY TO PRESCRIBE ALTERNATIVE METHODS OF VERIFYING RETURNS, ETC.

"(a) AUTHORITY.—The Secretary may, on a trial basis, provide for alternative methods for verifying, signing, and subscribing returns, declarations, statements, or other documents required to be made under the internal revenue laws and regulations. Such authority shall apply during calendar years 1993, 1994, and 1995.

"(b) TREATMENT OF ALTERNATIVE METHODS.—Any return, declaration, statement, or other document verified, signed or subscribed under any method adopted under subsection (a) shall be treated for all purposes (including penalties for perjury) in the same manner as verified by signature.

"(c) REPORT.—The Secretary shall, no later than December 31, 1994, report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of any trial conducted under subsection (a)."

(b) REPORTS.—The Comptroller General of the United States, and the Office of Technology Assessment, shall study each trial conducted under section 6066 of the Internal Revenue Code of 1986 (as added by subsection (a)) and report to the Congress the results of such study not later than December 31, 1994. Such report shall include recommendations as to whether, and in what form, the authority under such section should be continued.

(c) CONFORMING AMENDMENT.—The table of sections for part IV of subchapter A of chapter 61 is amended by adding at the end the following new item:

"Sec. 6066. Authority to prescribe alternative methods of verifying returns, etc."

TITLE V—TAXPAYER BILL OF RIGHTS 2

SEC. 5000. SHORT TITLE.

This title may be cited as the "Taxpayer Bill of Rights 2".

Subtitle A—Taxpayer Advocate

SEC. 5001. ESTABLISHMENT OF POSITION OF TAXPAYER ADVOCATE WITHIN INTERNAL REVENUE SERVICE.

(a) GENERAL RULE.—Section 7802 (relating to Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)) is amended by adding at the end thereof the following new subsection:

"(d) OFFICE OF TAXPAYER ADVOCATE.—

"(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Office of the Taxpayer Advocate'. Such office, including all problem resolution officers, shall be under the supervision and direction of an official to be known as the 'Taxpayer Advocate' who shall be appointed by the President by and with the advice and consent of the Senate, and who shall report directly to the Commissioner of Internal Revenue. The Taxpayer Advocate shall be entitled to compensation at the same rate as the Chief Counsel for the Internal Revenue Service.

"(2) *FUNCTIONS OF OFFICE.—*

"(A) *IN GENERAL.—It shall be the function of the Office of Taxpayer Advocate to—*

"(i) assist taxpayers in resolving problems with the Internal Revenue Service,

"(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

"(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

"(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

"(B) *ANNUAL REPORTS.—*

"(i) OBJECTIVES.—Not later than October 31 of each calendar year after 1992, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the following calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

"(ii) ACTIVITIES.—Not later than June 30 of each calendar year after 1992, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

"(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

"(II) contain recommendations received from individuals with the authority to issue taxpayer assistance orders under section 7811,

"(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

"(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

"(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

"(VI) contain an inventory of the items described in subclauses (II) and (III) for which no action has been taken, the period during which each item has remained on such inventory, the rea-

sons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

"(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

"(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolveproblems encountered by taxpayers, and

"(IX) include such other information as the Taxpayer Advocate may deem advisable.

"(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the Committees referred to in clauses (i) and (ii) without any prior review or comment from the Commissioner of the Internal Revenue Service, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

"(3) RESPONSIBILITIES OF COMMISSIONER OF INTERNAL REVENUE SERVICE.—The Commissioner of Internal Revenue shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate."

(b) CONFORMING AMENDMENTS.—

(1) Section 7811 (relating to taxpayer assistance orders) is amended—

(A) by striking "the Office of Ombudsman" in subsection (a) and inserting "the Office of the Taxpayer Advocate", and

(B) by striking "Ombudsman" each place it appears (including in the headings of subsections (e) and (f)) and inserting "Taxpayer Advocate".

(2) The heading for section 7802 is amended to read as follows:

"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONERS; TAXPAYER ADVOCATE."

(3) The table of sections for subchapter A of chapter 80 of subtitle F is amended by striking the item relating to section 7802 and inserting the following new item:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioners; Taxpayer Advocate."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5002. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.

(a) TERMS OF ORDERS.—Subsection (b) of section 7811 (relating to terms of taxpayer assistance orders) is amended—

(1) by inserting "within a specified time period" after "the Secretary", and

(2) by inserting "take any action as permitted by law," after "cease any action,".

(b) LIMITATION ON AUTHORITY TO MODIFY OR RESCIND.—Section 7811(c) (relating to authority to modify or rescind) is amended to read as follows:

"(c) AUTHORITY TO MODIFY OR RESCIND.—Any Taxpayer Assistance Order issued by the Taxpayer Advocate under this section may be modified or rescinded only by the Taxpayer Advocate, the Commissioner, or any superior of either."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Modifications to Installment Agreement Provisions

SEC. 5101. NOTIFICATION OF REASONS FOR TERMINATION OR DENIAL OF INSTALLMENT AGREEMENTS.

(a) TERMINATIONS.—Subsection (b) of section 6159 (relating to extent to which agreements remain in effect) is amended by adding at the end thereof the following new paragraph:

"(5) NOTICE REQUIREMENTS.—The Secretary may not take any action under paragraph (2), (3), or (4) unless—

"(A) a notice of such action is provided to the taxpayer not later than the day 30 days before the date of such action, and

"(B) such notice includes an explanation why the Secretary intends to take such action.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy."

(b) DENIALS.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by adding at the end thereof the following new subsection:

"(c) NOTICE REQUIREMENTS FOR DENIALS.—The Secretary may not deny any request for an installment agreement under this section unless—

"(1) a notice of the proposed denial is provided to the taxpayer not later than the day 30 days before the date of such denial, and

"(2) such notice includes an explanation why the Secretary intends to deny such request.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which a request for an agreement under this section relates is in jeopardy."

(c) CONFORMING AMENDMENT.—Paragraph (3) of section 6159(b) is amended to read as follows:

"(3) SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement."

(d) Effective Date.—The amendments made by this section shall take effect on the date 6 months after the date of the enactment of this Act.

SEC. 5102. ADMINISTRATIVE REVIEW OF DENIAL OF REQUEST FOR, OR TERMINATION OF, INSTALLMENT AGREEMENT.

(a) General Rule.—Section 6159 (relating to agreements for payment of tax liability in installments), as amended by section 5101, is amended by adding at the end thereof the following new subsection:

"(d) Administrative Review.—The Secretary shall establish procedures for an independent administrative review of denials of requests for, or terminations of, installment agreements under this section."

(b) Effective Date.—The amendment made by subsection (a) shall take effect on January 1, 1993.

Subtitle C—Interest

SEC. 5201. EXPANSION OF AUTHORITY TO ABATE INTEREST.

(a) General Rule.—Paragraph (1) of section 6404(e) (relating to abatement of interest in certain cases) is amended—

(1) by inserting "unreasonable" before "error" each place it appears in subparagraphs (A) and (B), and

(2) by striking "ministerial act" each place it appears and inserting "ministerial or managerial act".

(b) Clerical Amendment.—The subsection heading for subsection (e) of section 6404 is amended by striking "Assessments" and inserting "Abatement".

(c) Effective Date.—The amendments made by this section shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act.

SEC. 5202. EXTENSION OF INTEREST-FREE PERIOD FOR PAYMENT OF TAX AFTER NOTICE AND DEMAND.

(a) General Rule.—Paragraph (3) of section 6601(e) (relating to payments made within 10 days after notice and demand) is amended to read as follows:

"(3) Payments made within specified period after notice and demand.—If notice and demand is made for payment of any amount and if such amount is paid within 21 days (10 days if the amount for which such notice and demand is made equals or exceeds $100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."

(b) Conforming Amendment.—Paragraph (3) of section 6651(a) (relating to addition to tax for failure to file tax return or pay tax) is amended by striking "10 days" and inserting "21 days (10 days if the amount for which such notice and demand is made equals or exceed $100,000)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any notice and demand given after June 30, 1993.

Subtitle D—Joint Returns

SEC. 5301. DISCLOSURE OF COLLECTION ACTIVITIES.

(a) GENERAL RULE.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest) is amended by adding at the end thereof the following new paragraph:

"(8) DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN.—If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing of either of such individuals, the Secretary may disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5302. JOINT RETURN MAY BE MADE AFTER SEPARATE RETURNS WITHOUT FULL PAYMENT OF TAX.

(a) GENERAL RULE.—Paragraph (2) of section 6013(b) (relating to limitations on filing of joint return after filing separate returns) is amended by striking subparagraph (A) and redesignating the following subparagraphs accordingly.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

Subtitle E—Collection Activities

SEC. 5401. MODIFICATIONS TO LIEN AND LEVY PROVISIONS.

(a) WITHDRAWAL OF CERTAIN NOTICES.—Section 6323 (relating to validity and priority against certain persons) is amended by adding at the end thereof the following new subsection:

"(j) WITHDRAWAL OF NOTICE IN CERTAIN CIRCUMSTANCES.—

"(1) IN GENERAL.—The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that—

"(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

"(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice thereof at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer.

"(2) NOTICE TO CREDIT AGENCIES, ETC.—Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe."

(b) RETURN OF LEVIED PROPERTY IN CERTAIN CASES.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end thereof the following new subsection:

"(d) RETURN OF PROPERTY IN CERTAIN CASES.—If—

"(1) any property has been levied upon, and

"(2) the Secretary determines that—

"(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

"(C) the return of such property will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c)."

(c) MODIFICATIONS IN CERTAIN LEVY EXEMPTION AMOUNTS.—

(1) FUEL, ETC.—Paragraph (2) of section 6334(a) (relating to fuel, provisions, furniture, and personal effects exempt from levy) is amended—

(A) by striking "If the taxpayer is the head of a family, so" and inserting "So", and

(B) by striking "$1,650 ($1,550 in the case of levies issued during 1989)" and inserting "$1,700".

(2) BOOKS, ETC.—Paragraph (3) of section 6334(a) (relating to books and tools of a trade, business, or profession exempt from levy) is amended by striking "$1,100 ($1,050 in the case of levies issued during 1989)" and inserting "$1,200".

(3) INDEXED FOR INFLATION.—Section 6334 (relating to property exempt from levy) is amended by adding at the end thereof the following new subsection:

"(f) INFLATION ADJUSTMENTS.—

"(1) IN GENERAL.—In the case of any calendar year beginning after 1993, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof.

"(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10)."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXEMPT AMOUNTS.—The amendments made by subsection (c) shall take effect with respect to levies issued after December 31, 1992.

SEC. 5402. OFFERS-IN-COMPROMISE.

(a) GENERAL RULE.—Subsection (a) of section 7122 (relating to compromises) is amended by adding at the end thereof the following new sentence: "The Secretary may make such a compromise in any case where the Secretary determines that such compromise would be in the best interests of the United States.".

(b) REVIEW REQUIREMENTS.—Subsection (b) of section 7122 (relating to records) is amended by striking "$500." and inserting "$50,000. However, such compromise shall be subject to continuing quality review by the Secretary.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5403. NOTIFICATION OF EXAMINATION.

(a) IN GENERAL.—Section 7605 (relating to restrictions on examination of taxpayer) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) NOTIFICATION REQUIREMENT.—No examination described in subsection (a) shall be made unless the Secretary notifies the taxpayer in writing by mail to an address determined under section 6212(b) that the taxpayer is under examination and provides the taxpayer with an explanation of the process as described in section 7521(b)(1). The preceding sentence shall not apply in the case of any examination if the Secretary determines that—

"(1) such examination is in connection with a criminal investigation or is with respect to a tax the collection of which is in jeopardy, or

"(2) the application of the preceding sentence would be inconsistent with national security needs or would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity."

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 7521(b) (relating to safeguards) is amended by striking "or at".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5404. INCREASE IN LIMIT ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS.

(a) GENERAL RULE.—Subsection (b) of section 7433 (relating to damages) is amended by striking "$100,000" and inserting "$1,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 5405. SAFEGUARDS RELATING TO DESIGNATED SUMMONS.

(a) STANDARD OF REVIEW.—Subparagraph (A) of section 6503(k)(2) (defining designated summons) is amended by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively, and by inserting before clause (ii) (as so redesignated) the following new clause:

> *"(i) the issuance of such summons is preceded by a review of such issuance by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted,".*

(b) NOTICE REQUIREMENTS FOR ISSUANCE.—Section 6503(k) is amended by adding at the end thereof the following new paragraph:

"(4) NOTICE REQUIREMENTS.—With respect to any summons referred to in paragraph (1)(A) issued to any person other than the corporation, the Secretary shall promptly notify the corporation, in writing, that such summons has been issued with respect to such corporation's return of tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to summons issued after the date of the enactment of this Act.

Subtitle F—Information Returns

SEC. 5501. PHONE NUMBER OF PERSON PROVIDING PAYEE STATEMENTS REQUIRED TO BE SHOWN ON SUCH STATEMENT.

(a) GENERAL RULE.—The following provisions are each amended by striking "name and address" and inserting "name, address, and phone number of the information contact":

(1) Section 6041(d)(1).
(2) Section 6041A(e)(1).
(3) Section 6042(c)(1).
(4) Section 6044(e)(1).
(5) Section 6045(b)(1).
(6) Section 6049(c)(1)(A).
(7) Section 6050B(b)(1).
(8) Section 6050H(d)(1).
(9) Section 6050I(e)(1).
(10) Section 6050J(e).
(11) Section 6050K(b)(1).
(12) Section 6050N(b)(1).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to statements required to be furnished after December 31, 1993 (determined without regard to any extension).

SEC. 5502. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

(a) GENERAL RULE.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7434 as section 7435 and by inserting after section 7433 the following new section:

"SEC. 7434. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

"(a) IN GENERAL.—If any person willfully files a false or fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of $5,000 or the sum of—

"(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the false or fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing), and

"(2) the costs of the action.

"(c) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within the later of—

"(1) 4 years after the date of the filing of the false or fraudulent information return, or

"(2) 1 year after the date such false or fraudulent information return would have been discovered by exercise of reasonable care.

"(d) COPY OF COMPLAINT FILED WITH IRS.—Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

"(e) FINDING OF COURT TO INCLUDE CORRECT AMOUNT OF PAYMENT.—The judgment of the court in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

"(f) INFORMATION RETURN.—For purposes of this section, the term 'information return' means any statement described in section 6724(d)(1)(A)."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7434 and inserting the following:

"Sec. 7434. Civil damages for fraudulent filing of information returns.
"Sec. 7435. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to false or fraudulent information returns filed after the date of the enactment of this Act.

SEC. 5503. REQUIREMENT TO VERIFY ACCURACY OF INFORMATION RETURNS.

(a) GENERAL RULE.—Section 6201 (relating to assessment authority) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS.—In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall present reasonable and probative information concerning such deficiency in addition to such information return."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle G—Modifications to Penalty for Failure to Collect and Pay Over Tax

SEC. 5601. PRELIMINARY NOTICE REQUIREMENT.

(a) IN GENERAL.—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) PRELIMINARY NOTICE REQUIREMENT.—

"(1) IN GENERAL.—No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) that the taxpayer shall be subject to an assessment of such penalty.

"(2) TIMING OF NOTICE.—The mailing of the notice described in paragraph (1) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

"(3) STATUTE OF LIMITATIONS.—If a notice described in paragraph (1) with respect to any penalty is mailed before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the date 90 days after the date on which such notice was mailed.

"(4) EXCEPTION FOR JEOPARDY.—This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to assessments made after June 30, 1993.

SEC. 5602. NO PENALTY IF PROMPT NOTIFICATION OF THE SECRETARY.

(a) IN GENERAL.—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by adding at the end thereof the following new subsection:

"(d) PENALTY NOT APPLICABLE WHERE PROMPT NOTIFICATION OF FAILURE.—

"(1) IN GENERAL.—A person shall not be liable for any penalty under subsection (a) by reason of any failure referred to in subsection (a) if—

"(A) such person is not a significant owner, or highly compensated employee, of the trade or business with respect to which such failure occurred,

"(B) such person notifies the Secretary (in such manner as he may prescribe) that such failure has occurred within 10 days after the date of such failure,

"(C) such notification was before any notice by the Secretary to any person with respect to such failure, and

"(D) such failure is not a part of a plan to defraud the Federal Government.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) SIGNIFICANT OWNER.—The term 'significant owner' means—

"(i) any person holding an interest as a proprietor in a trade or business carried on as a proprietorship, and

"(ii) in the case of a trade or business conducted by a corporation or partnership, any person who is a 5-percent owner (as defined in section 416(i)(1)) in such corporation or partnership, as the case may be.

"(B) HIGHLY COMPENSATED EMPLOYEE.—The term 'highly compensated employee' means any employee who receives compensation from the employer at an annual rate in excess of $75,000.

"(3) SPECIAL RULES.—

"(A) ONE-TIME RELIEF.—This subsection shall apply only once with respect to—

"(i) any person, and

"(ii) any trade or business with respect to which the failure described in subsection (a) occurred.

"(B) APPLICATION OF SUBSECTION.—This subsection shall not apply if it results in no person being held liable for the penalty described in subsection (a)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of failures after the date of the enactment of this Act.

SEC. 5603. DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY.

(a) IN GENERAL.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest), as amended by section 5301, is amended by adding at the end thereof the following new paragraph:

"(9) DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY UNDER SECTION 6672.—If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person—

"(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and

"(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5604. PENALTIES UNDER SECTION 6672.

(a) PUBLIC INFORMATION REQUIREMENTS.—The Secretary of the Treasury or the Secretary's delegate (hereafter in this section referred to as the "Secretary") shall take such actions as may be appropriate to ensure that employees are aware of their responsibilities under the Federal tax depository system, the circumstances under which employees may be liable for the penalty imposed by section 6672 of the Internal Revenue Code of 1986, and the responsibility to promptly report to the Internal Revenue Service any failure referred to in subsection (a) of such section 6672. Such actions shall include—

(1) printing of a warning on deposit coupon booklets and the appropriate tax returns that certain employees may be liable for the penalty imposed by such section 6672, and

(2) the development of a special information packet.

(b) BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS.—

(1) VOLUNTARY BOARD MEMBERS.—

(A) IN GENERAL.—The penalty under section 6672 of the Internal Revenue Code of 1986 shall not be imposed on unpaid, volunteer members of any board of trustees or directors of an organization referred to in section 501 of such Code to the extent such members are solely serving in an honorary capacity, do not participate in the day-to-day or financial operations of the organization, and do not have actual knowledge of the failure on which such penalty is imposed.

(B) APPLICATION OF PARAGRAPH.—This paragraph shall not apply if it results in no person being held liable for the penalty described in section 6672(a) of the Internal Revenue Code of 1986.

(2) DEVELOPMENT OF EXPLANATORY MATERIALS.—The Secretary shall develop materials explaining the circumstances under which board members of tax-exempt organizations (including voluntary and honorary members) may be subject to penalty under section 6672 of such Code. Such materials shall be made available to tax-exempt organizations.

(3) IRS INSTRUCTIONS.—The Secretary shall clarify the instructions to Internal Revenue Service employees on the application of the penalty under section 6672 of such Code with regard to voluntary members of boards of trustees or directors of tax-exempt organizations.

(c) PROMPT NOTIFICATION.—To the maximum extent practicable, the Secretary shall notify all persons who have failed to make timely and complete deposit of any taxes described in section 6672 of the Internal Revenue Code of 1986 of such failure within 30 days

after the return was filed reflecting such failure or after the date on which the Secretary is first aware of such failure. If the person failing to make the deposit is not an individual, the Secretary shall notify the entity subject to such deposit requirement and that entity shall notify, within 15 days of the notification by the Secretary, all officers, general partners, trustees, or other managers of the failure.

Subtitle H—Awarding of Costs and Certain Fees

SEC. 5701. MOTION FOR DISCLOSURE OF INFORMATION.

Paragraph (4) of section 7430(c) (defining prevailing party) is amended by adding at the end thereof the following new subparagraph:

"(C) MOTION FOR DISCLOSURE OF INFORMATION.—Once a taxpayer substantially prevails as described in subparagraph (A)(ii), the taxpayer may file a motion for an order requiring the disclosure (within a reasonable period of time specified by the court) of all information and copies of relevant records in the possession of the Internal Revenue Service with respect to such taxpayer's case and the substantial justification for the position taken by the Internal Revenue Service."

SEC. 5702. INCREASED LIMIT ON ATTORNEY FEES.

Paragraph (1) of section 7430(c) (defining reasonable litigation costs) is amended—

(1) by striking "$75" in clause (iii) of subparagraph (B) and inserting "$110",

(2) by striking "an increase in the cost of living or" in clause (iii) of subparagraph (B), and

(3) by adding after clause (iii) the following:

"In the case of any calendar year beginning after 1992, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1991' for 'calendar year 1989' in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10)."

SEC. 5703. FAILURE TO AGREE TO EXTENSION NOT TAKEN INTO ACCOUNT.

Paragraph (1) of section 7430(b) (relating to requirement that administrative remedies be exhausted) is amended by adding at the end thereof the following new sentence: "Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence."

SEC. 5704. EFFECTIVE DATE.

The amendments made by this subtitle shall apply in the case of proceedings commenced after the date of the enactment of this Act.

Subtitle I—Other Provisions

SEC. 5801. REQUIRED CONTENT OF CERTAIN NOTICES.

(a) GENERAL RULE.—Subsection (a) of section 7522 (relating to content of tax due, deficiency, and other notices) is amended by striking "shall describe the basis for, and identify" and inserting "shall set forth the adjustments which are the basis for, and shall identify".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to notices sent after the date 6 months after the date of the enactment of this Act.

SEC. 5802. TREATMENT OF SUBSTITUTE RETURNS UNDER SECTION 6651.

(a) GENERAL RULE.—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end thereof the following new subsection:

"(h) TREATMENT OF RETURNS PREPARED BY SECRETARY UNDER SECTION 6020(b).—In the case of any return made by the Secretary under section 6020(b)—

"(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

"(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of any return the due date for which (determined without regard to extensions) is after the date of the enactment of this Act.

SEC. 5803. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS.

(a) IN GENERAL.—Subsection (b) of section 7805 (relating to rules and regulations) is amended to read as follows:

"(b) RETROACTIVITY OF REGULATIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

"(A) The date on which such regulation is filed with the Federal Register.

"(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

"(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

"(2) EXCEPTION FOR PROMPTLY ISSUED REGULATIONS.—Paragraph (1) shall not apply to regulations issued within 12 months of the date of the enactment of the statutory provision to which the regulation relates.

"(3) PREVENTION OF ABUSE.—The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse of a statute to which the regulation relates.

"(4) CORRECTION OF PROCEDURAL DEFECTS.—The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

"(5) INTERNAL REGULATIONS.—The limitations of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices or procedures.

"(6) CONGRESSIONAL AUTHORIZATION.—The limitation of paragraph (1) may be superseded by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

"(7) ELECTION TO APPLY RETROACTIVELY.—The Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

"(8) APPLICATION TO RULINGS.—The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendment made by subsection (a) shall apply with respect to—

(A) any temporary or proposed regulation filed on or after July 28, 1992, and

(B) any temporary or proposed regulation filed before July 28, 1992, and filed as a final regulation after such date.

(2) SPECIAL RULE.—Section 7805(b)(2) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply only to statutes enacted on or after the date of the enactment of this Act.

(3) REGULATIONS RELATING TO EXCHANGE RATES.—The amendment made by subsection (a) shall not apply to any regulation issued pursuant to paragraph (1)(C) or (4) of section 986(a) of the Internal Revenue Code of 1986, as added by section 4421.

SEC. 5804. REQUIRED NOTICE OF CERTAIN PAYMENTS.

If any payment is received by the Secretary of the Treasury or the Secretary's delegate (hereafter in the section referred to as the "Secretary") from any taxpayer and the Secretary cannot associate such payment with any outstanding tax liability of such taxpayer, the Secretary shall make reasonable efforts to notify the taxpayer of such inability within 60 days after the receipt of such payment.

SEC. 5805. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

(a) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7434 as section 7435 and by inserting after section 7433 the following new section:

"SEC. 7434. CIVIL DAMAGES FOR UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

"(a) IN GENERAL.—If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or en-

rolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $500,000 or the sum of—

"(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and

"(2) the costs of the action.

Damages shall not include the taxpayer's liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

"(c) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(d) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

"(e) MANDATORY STAY.—Upon a certification by the Commissioner or the Commissioner's delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending, shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

"(f) CRIME-FRAUD EXCEPTION.—Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7434 and by adding at the end thereof the following new items:

"Sec. 7434. Civil damages for unauthorized enticement of information disclosure.
"Sec. 7435. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions after the date of the enactment of this Act.

Subtitle J—Form Modifications; Studies

SEC. 5900. DEFINITIONS.

For purposes of this subtitle:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(2) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(3) TAX-WRITING COMMITTEES.—The term "tax-writing Committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART I—FORM MODIFICATIONS

SEC. 5901. EXPLANATION OF CERTAIN PROVISIONS.

(a) GENERAL RULE.—The Secretary shall take such actions as may be appropriate to ensure that taxpayers are aware of the provisions of the 1986 Code permitting payment of tax in installments, extensions of time for payment of tax, and compromises of tax liability. Such actions shall include revising the instructions for filing income tax returns so that such instructions include an explanation of—

(1) the procedures for requesting the benefits of such provisions, and

(2) the terms and conditions under which the benefits of such provisions are available.

(b) COLLECTION NOTICES.—In any notice of an underpayment of tax or proposed underpayment of tax sent by the Secretary to any taxpayer, the Secretary shall include a notification of the availability of the provisions of sections 6159, 6161, and 7122 of the 1986 Code.

SEC. 5902. IMPROVED PROCEDURES FOR NOTIFYING SERVICE OF CHANGE OF ADDRESS OR NAME.

The Secretary shall provide improved procedures for taxpayers to notify the Secretary of changes in names and addresses. Not later than June 30, 1993, the Secretary shall institute procedures for timely updating all Internal Revenue Service records with change-of-address information provided to the Secretary by taxpayers.

SEC. 5903. RIGHTS AND RESPONSIBILITIES OF DIVORCED INDIVIDUALS.

The Secretary shall include in the Internal Revenue Service publication entitled "Your Rights As A Taxpayer" a section on the rights and responsibilities of divorced individuals.

PART II—STUDIES

SEC. 5911. PILOT PROGRAM FOR APPEAL OF ENFORCEMENT ACTIONS.

(a) GENERAL RULE.—The Secretary shall establish a 1-year pilot program for appeals of enforcement actions (including lien, levy, and seizure actions) to the Appeals Division of the Internal Revenue Service—

(1) where the deficiency was assessed without actual knowledge of the taxpayer,

(2) where the deficiency was assessed without an opportunity for administrative appeal, and

(3) in other appropriate circumstances.

(b) REPORT.—Not later than June 30, 1993, the Secretary shall submit to the tax-writing Committees a report on the pilot program established under subsection (a), together with such recommendations as he may deem advisable.

SEC. 5912. STUDY ON TAXPAYERS WITH SPECIAL NEEDS.

(a) GENERAL RULE.—The Secretary shall conduct a study on ways to assist the elderly, physically impaired, foreign-language speaking, and other taxpayers with special needs to comply with the internal revenue laws.

(b) REPORT.—Not later than June 30, 1993, the Secretary shall submit to the tax-writing Committees a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable.

SEC. 5913. REPORTS ON TAXPAYER-RIGHTS EDUCATION PROGRAM.

Not later than April 1, 1993, the Secretary shall submit a report to the tax-writing Committees on the scope and content of the Internal Revenue Service's taxpayer-rights education program for its officers and employees. Not later than June 30, 1993, the Secretary shall submit a report to the tax-writing Committees on the effectiveness of the program referred to in the preceding sentence.

SEC. 5914. BIENNIAL REPORTS ON MISCONDUCT BY INTERNAL REVENUE SERVICE EMPLOYEES.

During June 30, 1993 and during June of each second calendar year thereafter, the Secretary shall report to the tax-writing Committees on all cases involving complaints about misconduct of Internal Revenue Service employees and the disposition of such complaints.

SEC. 5915. STUDY OF NOTICES OF DEFICIENCY.

(a) GENERAL RULE.—The Comptroller General shall conduct a study on—

(1) the effectiveness of current Internal Revenue Service efforts to notify taxpayers with regard to tax deficiencies under section 6212 of the 1986 Code,

(2) the number of registered or certified letters and other notices returned to the Internal Revenue Service as undeliverable,

(3) any follow-up action taken by the Internal Revenue Service to locate taxpayers who did not receive actual notice,

(4) the effect that failures to receive notice of such deficiencies have on taxpayers, and

(5) recommendations to improve Internal Revenue Service notification of taxpayers.

(b) REPORT.—Not later than June 30, 1993, the Comptroller General shall submit to the tax-writing Committees a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable.

SEC. 5916. NOTICE AND FORM ACCURACY STUDY.

(a) GENERAL RULE.—The Comptroller General shall conduct annual studies of the accuracy of 25 of the most commonly used Internal Revenue Service forms, notices, and publications. In conducting any such study, the Comptroller General shall examine the suitability and usefulness of Internal Revenue Service telephone numbers on Internal Revenue Service notices and shall solicit and consider the comments of organizations representing taxpayers, employers, and tax professionals.

(b) Reports.—The Comptroller General shall submit to the tax-writing Committees a report on each study conducted under subsection (a), together with such recommendations as he may deem advisable. The first such report shall be submitted not later than June 30, 1993.

SEC. 5917. INTERNAL REVENUE SERVICE EMPLOYEES' SUGGESTIONS STUDY.

(a) General Rule.—The Comptroller General shall conduct a study of the Internal Revenue Service employee-suggestion programs. Such study shall include a review of the suggestions which were accepted and rewarded by the Internal Revenue Service, an analysis as to how many of the suggestions were implemented, and an analysis of why other suggestions were not implemented.

(b) Report.—Not later than June 30, 1993, the Comptroller General shall submit to the tax-writing Committees a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable.

TITLE VI—TECHNICAL CORRECTIONS

SEC. 6100. COORDINATION WITH OTHER TITLES.

For purposes of applying the amendments made by any title of this Act other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.

Subtitle A—Revenue Provisions

SEC. 6101. AMENDMENTS RELATED TO REVENUE RECONCILIATION ACT OF 1990.

(a) Amendments Related to Subtitle A.—

(1) Subparagraph (B) of section 59(j)(3) is amended by striking "section 1(i)(3)(B)" and inserting "section 1(g)(3)(B)".

(2) Paragraph (2) of section 897(a) is amended by striking "21" in the heading of such paragraph and in subparagraph (A) and inserting "24".

(3) Clause (ii) of section 32(b)(1)(B) is amended by inserting a comma after "greater".

(4) Section 541 is amended by striking "28 percent" and inserting "31 percent".

(5) Subsection (c) of section 32 is amended by adding at the end thereof the following new pragraph:

"(4 Treatment of deduction for medical insurance of self-employed.—In determining the amount of adjusted gross income for purposes of this section, the amount of the deduction under section 162(l) shall be determined without regard to section 162(l)(3)(B)."

(6) Clause (i) of section 151(d)(3)(C) is amended by striking "joint of a return" and inserting "joint return".

(7) Subsection (b) of section 1 is amended by striking "$26,500" in the table contained therein and inserting "$26,050".

(b) AMENDMENTS RELATED TO SUBTITLE B.—

(1) Paragraph (1) of section 11212(e) of the Revenue Reconciliation Act of 1990 is amended by striking "Paragraph (1) of section 6724(d)" and inserting "Subparagraph (B) of section 6724(d)(1)".

(2) Subsection (b) of section 4082 is amended to read as follows:

"(b) TAX ON CERTAIN USES.—If any person uses gasoline (other than in the production of gasoline or special fuels referred to in section 4041), such use shall for purposes of this chapter be considered a removal."

(3)(A) Subparagraph (B) of section 4093(c)(2) is amended by inserting before the period "unless such fuel is sold for exclusive use by a State or any political subdivision thereof".

(B) Paragraph (4) of section 6427(l) is amended by inserting before the period "unless such fuel was used by a State or any political subdivision thereof".

(4) Paragraph (1) of section 6416(b) is amended by striking "chapter 32 or by section 4051" and inserting "chapter 31 or 32".

(5) Paragraph (1) of section 9502(e) is amended to read as follows:

"(1) INCREASES IN TAX REVENUES BEFORE 1993 TO REMAIN IN GENERAL FUND.—In the case of taxes imposed before January 1, 1993, the amounts required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be determined without regard to any increase in a rate of tax enacted by the Revenue Reconciliation Act of 1990."

(6) Section 7012 is amended—

(A) by striking "production or importation of gasoline" in paragraph (3) and inserting "taxes on gasoline and diesel fuel", and

(B) by striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(7) Subsection (c) of section 5041 is amended by striking paragraph (6) and by inserting the following new paragraphs:

"(6) CREDIT FOR TRANSFEREE IN BOND.—If—

"(A) wine produced by any person would be eligible for any credit under paragraph (1) if removed by such person during the calendar year,

"(B) wine produced by such person is removed during such calendar year by any other person (hereafter in this paragraph referred to as the 'transferee') to whom such wine was transferred in bond and who is liable for the tax imposed by this section with respect to such wine, and

"(C) such producer holds title to such wine at the time of its removal and provides to the transferee such information as is necessary to properly determine the transferee's credit under this paragraph,

then, the transferee (and not the producer) shall be allowed the credit under paragraph (1) which would be allowed to the producer if the wine removed by the transferee had been removed by the producer on that date.

"(7) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

"(A) to prevent the credit provided in this subsection from benefiting any person who produces more than 250,000 wine gallons during a calendar year, and

"(B) to assure proper reduction of such credit for persons producing more than 150,000 wine gallons of wine during a calendar year."

(8) Paragraph (3) of section 5061(b) is amended to read as follows:

"(3) section 5041(f),".

(9) Section 5354 is amended by inserting "(taking into account the appropriate amount of credit with respect to such wine under section 5041(c))" after "any one time".

(10) Effective on the date of the enactment of this Act, paragraph (7) of section 11202(i) of the Revenue Reconciliation Act of 1991 is amended by adding at the end thereof the following: "The Secretary may treat any person who bore the ultimate burden of the tax imposed by this subsection as the person to whom a credit or refund under such provisions may be allowed or made."

(c) AMENDMENTS RELATED TO SUBTITLE C.—

(1) Paragraph (4) of section 56(g) is amended by redesignating subparagraph (I) as subparagraph (H).

(2) Subparagraph (B) of section 6724(d)(1) is amended—

(A) by striking "or" at the end of clause (xi),

(B) by striking the period at the end of the clause added by section 11212(e) of the Revenue Reconciliation Act of 1990 and inserting ", or", and

(C) by redesignating the clause added by section 11323(c)(2) of such Act as clause (xiii).

(3) Subsection (g) of section 6302 is amended by inserting ", 22," after "chapters 21".

(4) The earnings and profits of any insurance company to which section 11305(c)(3) of the Revenue Reconciliation Act of 1990 applies shall be determined without regard to any deduction allowed under such section; except that, for purposes of applying sections 56, 902, 952(c)(1), and 960 of the Internal Revenue Code of 1986, such deduction shall be taken into account.

(5) Subparagraph (D) of section 6038A(e)(4) is amended—

(A) by striking "any transaction to which the summons relates" and inserting "any affected taxable year", and

(B) by adding at the end thereof the following new sentence: "For purposes of this subparagraph, the term 'affected taxable year' means any taxable year if the determination of the amount of tax imposed for such taxable year is affected by the treatment of the transaction to which the summons relates."

(6) Subparagraph (A) of section 6621(c)(2) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall be applied without regard to any such letter or notice which is withdrawn by the Secretary."

(7) Clause (i) of section 6621(c)(2)(B) is amended by striking "this subtitle" and inserting "this title".

(d) AMENDMENTS RELATED TO SUBTITLE D.—

(1) Paragraph (9) of section 132(h) is amended by striking "or the last sentence of subsection (c)(1) thereof".

(2) Notwithstanding section 11402(c) of the Revenue Reconciliation Act of 1990, the amendment made by section 11402(b)(1) of such Act shall apply to taxable years ending after December 31, 1989.

(3) Clause (ii) of section 143(m)(4)(C) is amended—

(A) by striking "any month of the 10-year period" and inserting "any year of the 4-year period",

(B) by striking "succeeding months" and inserting "succeeding years", and

(C) by striking "over the remainder of such period (or, if lesser, 5 years)" and inserting "to zero over the succeeding 5 years".

(e) AMENDMENTS RELATED TO SUBTITLE E.—

(1) Subsection (d) of section 39 is amended—

(A) by redesignating the paragraph added by section 11511(b)(2) of the Revenue Reconciliation Act of 1990 as paragraph (1), and

(B) by redesignating the paragraph added by section 11611(b)(2) of such Act as paragraph (2).

(2)(A) Subsection (h) of section 56 is amended—

(i) by striking "subsection (g)(4)(G)" in paragraph (5) and inserting "subsection (g)(4)(F)", and

(ii) by striking "section 613(e)(3)" in paragraph (7)(B) and inserting "section 613(e)(2)".

(B) Clause (ii) of section 56(d)(1)(B) is amended to read as follows:

"(ii) appropriate adjustments in the application of section 172(b)(2) shall be made to take into account the limitation of subparagraph (A)."

(C)(i) Subparagraph (B) of section 56(g)(1) is amended by striking "and the alternative tax net operating loss deduction" and inserting ", the alternative tax net operating loss deduction, and the deduction under subsection (h)".

(ii) Subparagraph (B) of section 56(g)(3) is amended by striking "and the alternative tax net operating loss deduction" and inserting ", the alternative tax net operating loss deduction, and the deduction under subsection (h)".

(3) Clause (i) of section 613A(c)(3)(A) is amended by striking "the table contained in".

(4) Section 6501 is amended—

(A) by striking subsection (m) (relating to deficiency attributable to election under section 44B) and by redesignating subsections (n) and (o) as subsections (m) and (n), respectively, and

(B) by striking "section 40(f) or 51(j)" in subsection (m) (as redesignated by subparagraph (A)) and inserting "section 40(f), 43, or 51(j)".

(5) Paragraph (2) of section 55(c) is amended by striking "29(b)(5)" and inserting "29(b)(6)".

(6) Subparagraph (C) of section 38(c)(2) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) is amended by inserting before the period at the end of the first sentence the following: "and without regard to the deduction under section 56(h)".

(7) Clauses (iii) and (iv) of section 53(d)(1)(B) are each amended by striking "section 29(b)(5)(B)" and inserting "section 29(b)(6)(B)".

(8) Subparagraph (B) of section 56(h)(4) is amended by striking "For purposes of subparagraph (A), the" and inserting "The".

(f) AMENDMENTS RELATED TO SUBTITLE F.—

(1)(A) Section 2701(a)(3) is amended by adding at the end thereof the following new subparagraph:

"(C) VALUATION OF QUALIFIED PAYMENTS WHERE NO LIQUIDATION, ETC. RIGHTS.—In the case of an applicable retained interest which is described in subparagraph (B)(i) but not subparagraph (B)(ii), the value of the distribution right shall be determined without regard to this section."

(B) Section 2701(a)(3)(B) is amended by inserting "CERTAIN" before "QUALIFIED" in the heading thereof.

(C) Sections 2701 (d)(1) and (d)(4) are each amended by striking "subsection (a)(3)(B)" and inserting "subsection (a)(3)(B) or (C)".

(2) Clause (i) of section 2701(a)(4)(B) is amended by inserting "(or, to the extent provided in regulations, the rights as to either income or capital)" after "income and capital".

(3)(A) Section 2701(b)(2) is amended by adding at the end thereof the following new subparagraph:

"(C) APPLICABLE FAMILY MEMBER.—For purposes of this subsection, the term 'applicable family member' includes any lineal descendant of any parent of the transferor or the transferor's spouse."

(B) Section 2701(e)(3) is amended—

(i) by striking subparagraph (B), and

(ii) by striking so much of paragraph (3) as precedes "shall be treated as holding" and inserting:

"(3) ATTRIBUTION OF INDIRECT HOLDINGS AND TRANSFERS.—An individual".

(C) Section 2704(c)(3) is amended by striking "section 2701(e)(3)(A)" and inserting "section 2701(e)(3)".

(4) Clause (i) of section 2701(c)(1)(B) is amended to read as follows:

"(i) a right to distributions with respect to any interest which is junior to the rights of the transferred interest,".

(5)(A) Clause (i) of section 2701(c)(3)(C) is amended to read as follows:

"(i) IN GENERAL.—Payments under any interest held by a transferor which (without regard to this subparagraph) are qualified payments shall be treated as qualified payments unless the transferor elects not to treat such payments as qualified payments. Payments described in the preceding sentence which are held by an applicable family member shall be treated as qualified payments only if such

member elects to treat such payments as qualified payments."

(B) The first sentence of section 2701(c)(3)(C)(ii) is amended to read as follows: "A transferor or applicable family member holding any distribution right which (without regard to this subparagraph) is not a qualified payment may elect to treat such right as a qualified payment, to be paid in the amounts and at the times specified in such election."

(C) The time for making an election under the second sentence of section 2701(c)(3)(C)(i) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) shall not expire before the due date (including extensions) for filing the transferor's return of the tax imposed by section 2501 of such Code for calendar year 1991.

(6) Section 2701(d)(3)(A)(iii) is amended by striking "the period ending on the date of".

(7) Subclause (I) of section 2701(d)(3)(B)(ii) is amended by inserting "or the exclusion under section 2503(b)," after "section 2523,".

(8) Section 2701(e)(5) is amended—

(A) by striking "such contribution to capital or such redemption, recapitalization, or other change" in subparagraph (A) and inserting "such transaction", and

(B) by striking "the transfer" in subparagraph (B) and inserting "such transaction".

(9) Section 2701(d)(4) is amended by adding at the end thereof the following new subparagraph:

"(C) TRANSFER TO TRANSFERORS.—In the case of a taxable event described in paragraph (3)(A)(ii) involving a transfer of an applicable retained interest from an applicable family member to a transferor, this subsection shall continue to apply to the transferor during any period the transferor holds such interest."

(10) Section 2701(e)(6) is amended by inserting "or to reflect the application of subsection (d)" before the period at the end thereof.

(11)(A) Section 2702(a)(3)(A) is amended—

(i) by striking "to the extent" and inserting "if" in clause (i),

(ii) by striking "or" at the end of clause (i),

(iii) by striking the period at the end of clause (ii) and inserting ", or", and

(iv) by adding at the end thereof the following new clause:

"(iii) to the extent that regulations provide that such transfer is not inconsistent with the purposes of this section."

(B)(i) Section 2702(a)(3) is amended by striking "incomplete transfer" each place it appears and inserting "incomplete gift".

(ii) The heading for section 2702(a)(3)(B) is amended by striking "INCOMPLETE TRANSFER" and inserting "INCOMPLETE GIFT".

(g) AMENDMENTS RELATED TO SUBTITLE G.—

(1)(A) Subsection (a) of section 1248 is amended—

(i) by striking ", or if a United States person receives a distribution from a foreign corporation which, under section 302 or 331, is treated as an exchange of stock" in paragraph (1), and

(ii) by adding at the end thereof the following new sentence: "For purposes of this section, a United States person shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock."

(B) Paragraph (1) of section 1248(e) is amended by striking "or receives a distribution from a domestic corporation which, under section 302 or 331, is treated as an exchange of stock".

(C) Subparagraph (B) of section 1248(f)(1) is amended by striking "or 361(c)(1)" and inserting "355(c)(1), or 361(c)(1)".

(D) Paragraph (1) of section 1248(i) is amended to read as follows:

"(1) IN GENERAL.—If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, such 10-percent corporate shareholder shall recognize gain in the same manner as if the stock of the foreign corporation received in such exchange had been—

"(A) issued to the 10-percent corporate shareholder, and

"(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption or liquidation (whichever is appropriate).

The amount of gain recognized by such 10-percent corporate shareholder under the preceding sentence shall not exceed the amount treated as a dividend under this section."

(2) Section 897 is amended by striking subsection (f).

(3) Paragraph (13) of section 4975(d) is amended by striking "section 408(b)" and inserting "section 408(b)(12)".

(4) Clause (iii) of section 56(g)(4)(D) is amended by inserting ", but only with respect to taxable years beginning after December 31, 1989" before the period at the end thereof.

(5)(A) Paragraph (11) of section 11701(a) of the Revenue Reconciliation Act of 1990 (and the amendment made by such paragraph) are hereby repealed, and section 7108(r)(2) of the Revenue Reconciliation Act of 1989 shall be applied as if such paragraph (and amendment) had never been enacted.

(B) Subparagraph (A) shall not apply to any building if the owner of such building establishes to the satisfaction of the Secretary of the Treasury or his delegate that such owner reasonably relied on the amendment made by such paragraph (11).

(h) AMENDMENTS RELATED TO SUBTITLE H.—

(1)(A) Clause (vi) of section 168(e)(3)(B) is amended by striking "or" at the end of subclause (I), by striking the period at the end of subclause (II) and inserting ", or", and by adding at the end thereof the following new subclause:

"(III) is described in section 48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)."

(B) Subparagraph (K) of section 168(g)(4) is amended by striking "section 48(a)(3)(A)(iii)" and inserting "section

48(l)(3)(A)(ix) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(2) Clause (ii) of section 172(b)(1)(E) is amended by striking "subsection (m)" and inserting "subsection (h)".

(3) Sections 805(a)(4)(E), 832(b)(5)(C)(ii)(II), and 832(b)(5)(D)(ii)(II) are each amended by striking "243(b)(5)" and inserting "243(b)(2)".

(4) Subparagraph (A) of section 243(b)(3) is amended by inserting "of" after "In the case".

(5) The subsection heading for subsection (a) of section 280F is amended by striking "INVESTMENT TAX CREDIT AND".

(6) Clause (i) of section 1504(c)(2)(B) is amended by inserting "section" before "243(b)(2)".

(7) Paragraph (3) of section 341(f) is amended by striking "351, 361, 371(a), or 374(a)" and inserting "351, or 361".

(8) Paragraph (2) of section 243(b) is amended to read as follows:

"(2) AFFILIATED GROUP.—For purposes of this subsection:

"(A) IN GENERAL.—The term 'affiliated group' has the meaning given such term by section 1504(b), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.

"(B) GROUP MUST BE CONSISTENT IN FOREIGN TAX TREATMENT.—The requirements of paragraph (1)(A) shall not be treated as being met with respect to any dividend received by a corporation if, for any taxable year which includes the day on which such dividend is received—

"(i) 1 or more members of the affiliated group referred to in paragraph (1)(A) choose to any extent to take the benefits of section 901, and

"(ii) 1 or more other members of such group claim to any extent a deduction for taxes otherwise creditable under section 901.".

(9) The amendment made by section 11813(b)(17) of the Revenue Reconciliation Act of 1990 shall be applied as if the material stricken by such amendment included the closing parenthesis after "section 48(a)(5)".

(10) Paragraph (1) of section 179(d) is amended—

(A) by striking "in a trade or business" and inserting "a trade or business", and

(B) by adding at the end thereof the following new sentence: "Such term shall not include any property described in section 50(b) and shall not include air conditioning or heating units and horses".

(11) Subparagraph (E) of section 50(a)(2) is amended by striking "section 48(a)(5)(A)" and inserting "section 48(a)(5)".

(12) The amendment made by section 11801(c)(9)(G)(ii) of the Revenue Reconciliation Act of 1990 shall be applied as if it struck "Section 422A(c)(2)" and inserted "Section 422(c)(2)".

(13) Subparagraph (B) of section 424(c)(3) is amended by striking "a qualified stock option, an incentive stock option, an option granted under an employee stock purchase plan, or a restricted stock option" and inserting "an incentive stock option or an option granted under an employee stock purchase plan".

(14) Subparagraph (E) of section 1367(a)(2) is amended by striking "section 613A(c)(13)(B)" and inserting "section 613A(c)(11)(B)".

(15) Subparagraph (B) of section 460(e)(6) is amended by striking "section 167(k)" and inserting "section 168(e)(2)(A)(ii)".

(16) Subparagraph (C) of section 172(h)(4) is amended by striking "subsection (b)(1)(M)" and inserting "subsection (b)(1)(E)".

(17) Section 6503 is amended—

(A) by redesignating the subsection relating to extension in case of certain summonses as subsection (j), and

(B) by redesignating the subsection relating to cross references as subsection (k).

(18) Paragraph (4) of section 1250(e) is hereby repealed.

(i) EFFECTIVE DATE.—Any amendment made by this section shall take effect as if included in the provision of the Revenue Reconciliation Act of 1990 to which such amendment relates.

SEC. 6102. MISCELLANEOUS PROVISIONS.

(a) APPLICATION OF AMENDMENTS MADE BY TITLE XII OF OMNIBUS BUDGET RECONCILIATION ACT OF 1990.—Except as otherwise expressly provided, whenever in title XII of the Omnibus Budget Reconciliation Act of 1990 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(b) TREATMENT OF CERTAIN AMOUNTS UNDER HEDGE BOND RULES.—

(1) Clause (iii) of section 149(g)(3)(B) is amended to read as follows:

"(iii) AMOUNTS HELD PENDING REINVESTMENT OR REDEMPTION.—Amounts held for not more than 30 days pending reinvestment or bond redemption shall be treated as invested in bonds described in clause (i)."

(2) The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 7651 of the Omnibus Budget Reconciliation Act of 1989.

(c) TREATMENT OF CERTAIN DISTRIBUTIONS UNDER SECTION 1445.—

(1) IN GENERAL.—Paragraph (3) of section 1445(e) is amended by adding at the end thereof the following new sentence: "Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to distributions after the date of the enactment of this Act.

(d) TREATMENT OF CERTAIN CREDITS UNDER SECTION 469.—

(1) IN GENERAL.—Subparagraph (B) of section 469(c)(3) is amended by adding at the end thereof the following new sentence: "If the preceding sentence applies to the net income from any property for any taxable year, any credits allowable under subpart B (other than section 27(a)) or D of part IV of subchap-

ter A for such taxable year which are attributable to such property shall be treated as credits not from a passive activity to the extent the amount of such credits does not exceed the regular tax liability of the taxpayer for the taxable year which is allocable to such net income."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

(e) TREATMENT OF DISPOSITIONS UNDER PASSIVE LOSS RULES.—

(1) IN GENERAL.—Subparagraph (A) of section 469(g)(1) is amended to read as follows:

"(A) IN GENERAL.—If all gain or loss realized on such disposition is recognized, the excess of—

"(i) any loss from such activity for such taxable year (determined after the application of subsection (b)), over

"(ii) any net income or gain for such taxable year from all other passive activities (determined after the application of subsection (b)),

shall be treated as a loss which is not from a passive activity."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

(f) MISCELLANEOUS AMENDMENTS TO FOREIGN PROVISIONS.—

(1) COORDINATION OF UNIFIED ESTATE TAX CREDIT WITH TREATIES.—Subparagraph (A) of section 2102(c)(3) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, property shall not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States.".

(2) TREATMENT OF CERTAIN INTEREST PAID TO RELATED PERSON.—

(A) IN GENERAL.—Subparagraph (B) of section 163(j)(1) is amended by inserting before the period at the end thereof the following: "(and clause (ii) of paragraph (2)(A) shall not apply for purposes of applying this subsection to the amount so treated)".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply as if included in the amendments made by section 7210(a) of the Revenue Reconciliation Act of 1989.

(3) TREATMENT OF INTEREST ALLOCABLE TO EFFECTIVELY CONNECTED INCOME.—

(A) IN GENERAL.—

(i) Subparagraph (B) of section 884(f)(1) is amended by striking "to the extent" and all that follows down through "subparagraph (A)" and inserting "to the extent that the allocable interest exceeds the interest described in subparagraph (A)".

(ii) The second sentence of section 884(f)(1) is amended by striking "reasonably expected" and all that follows down through the period at the end there-

of and inserting "reasonably expected to be allocable interest.".

(iii) Paragraph (2) of section 884(f) is amended to read as follows:

"(2) ALLOCABLE INTEREST.—For purposes of this subsection, the term 'allocable interest' means any interest which is allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States."

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if included in the amendments made by section 1241(a) of the Tax Reform Act of 1986.

(4) CLARIFICATION OF SOURCE RULE.—

(A) IN GENERAL.—Paragraph (2) of section 865(b) is amended by striking "863(b)" and inserting "863".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 1211 of the Tax Reform Act of 1986.

(5) REPEAL OF OBSOLETE PROVISIONS.—

(A) Paragraph (1) of section 6038(a) is amended by striking ", and" at the end of subparagraph (E) and inserting a period, and by striking subparagraph (F).

(B) Subsection (b) of section 6038A is amended by adding "and" at the end of paragraph (2), by striking ", and" at the end of paragraph (3) and inserting a period, and by striking paragraph (4).

(g) TREATMENT OF ASSIGNMENT OF INTEREST IN CERTAIN BOND-FINANCED FACILITIES.—

(1) IN GENERAL.—Subparagraph (A) of section 1317(3) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new sentence: "A facility shall not fail to be treated as described in this subparagraph by reason of an assignment (or an agreement to an assignment) by the governmental unit on whose behalf the bonds are issued of any part of its interest in the property financed by such bonds to another governmental unit."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in such section 1317 on the date of the enactment of the Tax Reform Act of 1986.

(h) CLARIFICATION OF TREATMENT OF MEDICARE ENTITLEMENT UNDER COBRA PROVISIONS.—

(1) IN GENERAL.—

(A) Subclause (V) of section 4980B(f)(2)(B)(i) is amended to read as follows:

"(V) MEDICARE ENTITLEMENT FOLLOWED BY QUALIFYING EVENT.—In the case of a qualifying event described in paragraph (3)(B) that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act, the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this clause before

the close of the 36-month period beginning on the date the covered employee became so entitled."

(B) Clause (v) of section 602(2)(A) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(v) MEDICARE ENTITLEMENT FOLLOWED BY QUALIFYING EVENT.—In the case of a qualifying event described in section 603(2) that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act, the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this subparagraph before the close of the 36-month period beginning on the date the covered employee became so entitled."

(C) Clause (iv) of section 2202(2)(A) of the Public Health Service Act is amended to read as follows:

"(iv) MEDICARE ENTITLEMENT FOLLOWED BY QUALIFYING EVENT.—In the case of a qualifying event described in section 2203(2) that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act, the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this subparagraph before the close of the 36-month period beginning on the date the covered employee became so entitled."

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1989.

(i) TREATMENT OF CERTAIN REMIC INCLUSIONS.—

(1) IN GENERAL.—Subsection (a) of section 860E is amended by adding at the end thereof the following new paragraph:

"(6) COORDINATION WITH MINIMUM TAX.—For purposes of part VI of subchapter A of this chapter—

"(A) the reference in section 55(b)(2) to taxable income shall be treated as a reference to taxable income determined without regard to this subsection,

"(B) the alternative minimum taxable income of any holder of a residual interest in a REMIC for any taxable year shall in no event be less than the excess inclusion for such taxable year, and

"(C) any excess inclusion shall be disregarded for purposes of computing the alternative tax net operating loss deduction.

The preceding sentence shall not apply to any organization to which section 593 applies, except to the extent provided in regulations prescribed by the Secretary under paragraph (2)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 671 of the Tax Reform Act of 1986 unless the taxpayer elects to apply such amendment only to taxable years beginning after the date of the enactment of this Act.

(j) AMENDMENTS TO SUBTITLE B OF TITLE V OF UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1992.—

(1) AMENDMENTS TO SECTION 402.—

(A) Section 402(b)(4)(A) is amended by striking "paragraph (1) or (2)" and inserting "paragraph (1),".

(B) Section 402(c)(2) is amended by inserting "or subsection (e)(4)" after "paragraph (1)" the second place it appears.

(C) Section 402(c)(4) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting a comma and by adding at the end the following:

"(C) any distribution described in section 401(k)(2)(B)(i)(IV) or (V) or 403(b)(11) (B) or (C),

"(D) any distribution described in section 401(k)(8), 401(m)(6), or 402(g)(2), or any similar distribution specified by the Secretary in regulations,

"(E) any amount treated as a distribution by reason of a default on a loan described in section 72(p)(2), or any similar distribution specified by the Secretary in regulations, and

"(F) any distribution which is an applicable dividend (as defined in section 404(k)(2)).

For purposes of subparagraph (A), any social security supplemental payment described in the last sentence of section 411(a)(9) shall be disregarded in determining whether payments are substantially equal."

(D) Clause (iii) of section 402(d)(4)(A) is amended by striking "the" before "service".

(E) Section 402(e)(4)(A) is amended—

(i) by striking "the amount actually distributed to any distributee from a trust described in subsection (a) shall not include any" and inserting "there shall be excluded from gross income the", and

(ii) by inserting "if any portion of the distribution is transferred in a transfer" after "distribution" in the last sentence thereof.

(F) The heading for section 402(e)(4)(B) is amended to read as follows: "(B) LUMP SUM DISTRIBUTION.—".

(G) Section 402(f)(1) is amended by adding at the end the following new sentence:

"In the case of a series of distributions, notice under this paragraph shall be required only before the first distribution in such series to which this subsection applies."

(2) AMENDMENTS RELATING TO DIRECT ROLLOVERS.—

(A) Section 401(a)(31)(A) is amended—

(i) by inserting "or portion thereof" after "such distribution" each place it appears,

(ii) by striking "trustee-to-trustee transfer" and inserting "rollover", and

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

"In the case of a series of distributions, an election under this subparagraph shall apply to all distributions which are part of

the series after the election is made and before the election is revoked."

(B) Section 401(a)(31)(B) is amended—

(i) by striking "transferred" and inserting "directly rolled over", and

(ii) by inserting ", 402(e)(4)" after "402(c)".

(C) Section 401(a)(31)(C) is amended by inserting ", except that such term shall not include a distribution of less than $500, any distribution to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)), or any other distribution specified in regulations prescribed by the Secretary which is similar to distributions described in subparagraph (C), (D), or (E) of section 402(c)(4)" before the end period.

(D) Section 401(a)(31)(D) is amended—

(i) by striking "it is a defined contribution plan, the terms of which" and inserting "the terms of the trust", and

(ii) by adding at the end the following new sentence: "In the case of an annuity contract under section 403(b), the term 'eligible retirement plan' shall include only an individual retirement plan and an annuity contract described in section 403(b)(1).".

(E) Section 401(a)(31) is amended by adding at the end the following new subparagraph:

"(E) TREATMENT OF DIRECT ROLLOVER.—For purposes of this title, a direct rollover to which this paragraph applies shall be treated in the same manner as a distribution which the distributee transfers in a rollover to which section 402(c) applies (or in the case of an annuity contract under section 403 (a) or (b), in a rollover to which section 403 (a)(4) or (b)(8) applies).".

(F) The heading for section 401(a)(31) is amended by striking "TRANSFER" and inserting "ROLLOVER".

(G) Section 402(e) is amended by striking paragraph (6).

(H) Section 403(a) is amended by striking paragraph (5).

(I) Section 403(b)(10) is amended by striking the last sentence.

(J) Section 402(f)(2)(A) is amended—

(i) by striking "or" and inserting a comma, and

(ii) by inserting ", or paragraph (8) of section 403(b)" after "section 403(a)".

(3) AMENDMENTS RELATED TO WITHHOLDING.—

(A) Section 3405(c)(2) is amended by striking "if" and inserting "to the extent".

(B) Section 3405(c)(3) is amended by striking "402(f)(2)(A)" the first place it appears and inserting "401(a)(31)(C)".

(C) Section 3405(c)(3) is amended by striking "(or in the case of an annuity contract under section 403(b), a distribution from such contract described in section 402(f)(2)(A))".

(D) Section 3405(c)(3) is amended by inserting ", except that such term shall not include a distribution of less than $500" before the end period.

(E) Section 3405(c) is amended by adding at the end the following new paragraph:

"(4) COORDINATION WITH SECTION 401(a)(9).—If a portion of a designated distribution—

"(A) is not an eligible rollover distribution by reason of being required under section 401(a)(9), and

"(B) is de minimis in relation to the total designated distribution,

such portion shall be treated as part of the eligible rollover distribution to which this subsection applies."

(4) OTHER AMENDMENTS.—

(A) Section 401(a)(20) is amended by striking "or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan".

(B) Section 403(a)(4)(B) is amended by striking "(7)" and inserting "(9)".

(C) Section 403(b)(8)(B) is amended by striking "(7)" and inserting "(9)".

(D) Section 411(d)(3) is amended by striking "on the day" and inserting "no later than".

(E) Section 522(d)(2) of the Unemployment Compensation Amendments of 1992 is amended—

(i) by striking "a direct trustee-to-trustee transfer" and all that follows up to "the amendments" and inserting "a direct rollover from a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986)",

(ii) by striking "ANNUITY CONTRACTS" in the heading and inserting "GOVERNMENTAL PLANS", and

(iii) by inserting "(and section 402(f) of such Code, as amended by section 521)" after "section".

(F) Section 522(d) of the Unemployment Compensation Amendments of 1992 is amended—

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

"(3) SPECIAL RULE FOR CERTAIN PAYMENTS.—The amendments made by this section (and section 402(f) of such Code, as amended by section 521) shall not apply to any distribution—

"(A) which is 1 of a series of substantially equal periodic payments with respect to which the annuity starting date (within the meaning of section 417(f)(2) of such Code) is before January 1, 1993, or

"(B) which is made—

"(i) before July 1, 1993, or

"(ii) on or after July 1, 1993, but only if such distribution is 1 of a series of substantially equal periodic payments with respect to which the annuity starting date (within the meaning of section 417(f)(2) of such Code) is before July 1, 1993,

by reason of a death, disability, separation from service, or plan termination occurring before January 1, 1993.", and

(ii) by inserting "or (3)" after "(2)" in paragraph (1).

(G) Section 523 of the Unemployment Compensation Amendments of 1992 is amended—

(i) by inserting "the first day of" before "the first plan year", and

(ii) by striking "1994" and inserting "1995".

(H) Section 402(c)(9) is amended by striking "; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the amendments made by the Unemployment Compensation Amendments of 1992.

(k) TREATMENT OF CERTAIN CONTRIBUTIONS MADE PURSUANT TO VETERANS' REEMPLOYMENT RIGHTS.—

(1) IN GENERAL.—Section 414 is amended by adding at the end the following new subsection:

"(u) SPECIAL RULES RELATING TO VETERANS' REEMPLOYMENT RIGHTS.—

"(1) TREATMENT OF CERTAIN REQUIRED CONTRIBUTIONS.—If any contribution is made by an employer under an individual account plan with respect to an employee and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service—

"(A) such contribution shall not be subject to any otherwise applicable limitation contained in section 402(g), 403(b), 404(a), 408, 415, or 457, and

"(B) such plan shall not be treated as failing to meet any requirement of this part or section 457 by reason of the making of such contribution and such contribution shall not be taken into account in applying the limitations referred to in subparagraph (A) to other contributions.

For purposes of the preceding sentence, any additional elective deferral made under paragraph (2) shall be treated as an employer contribution required by reason of the employee's rights under such chapter 43.

"(2) REEMPLOYMENT RIGHTS WITH RESPECT TO ELECTIVE DEFERRALS.—

"(A) IN GENERAL.—If an employee is entitled to the benefits of chapter 43 of title 38, United States Code, with respect to any plan which provides for elective deferrals, such employer shall be treated as meeting the requirements of such chapter 43 with respect to such elective deferrals if such employer—

"(i) permits such employee to make additional elective deferrals under such plan (in the amount determined under subparagraph (B)) during the period (not longer than 5 years) which begins on the date of the reemployment and has the same length as the period of qualified military service which resulted in such rights, and

"(ii) makes a matching contribution in respect of any additional elective deferral made pursuant to clause (i) which would have been required had such deferral actually been made during the period of such qualified military service.

"(B) AMOUNT OF MAKEUP REQUIRED.—The amount determined under this subparagraph is the maximum amount of elective deferrals that the individual would have been permitted to make under the plan during his period of qualified military service if he had continued to be employed by the employer during such period and received compensation at the same rate as the individual received from the employer immediately before such qualified military service. Proper adjustment shall be made to the amount determined under the preceding sentence for any elective deferrals actually made during the period of such qualified military service.

"(C) ELECTIVE DEFERRAL.—For purposes of this paragraph, the term 'elective deferral' has the meaning given to such term by section 402(g)(3); except that such term shall include any deferral of compensation under an eligible deferred compensation plan (as defined in section 457(b)).

"(3) CERTAIN RETROACTIVE ADJUSTMENTS NOT REQUIRED.—Nothing in chapter 43 of title 38, United States Code, shall be construed as requiring—

"(A) any crediting of earnings to an employee with respect to any contribution before such contribution is actually made, or

"(B) any allocation with respect to the period of qualified military service of any of the following amounts—

"(i) any forfeiture,

"(ii) any employer contribution which was voluntary, and

"(iii) any employer contribution the total amount of which was determined without reference to the number of, or compensation of, plan participants before being allocated to the accounts of participants.

"(4) LOAN REPAYMENT SUSPENSIONS PERMITTED.—If any plan suspends the repayment of any loan made to an individual for the period while such individual is performing qualified military service, such suspension shall not be taken into account for purposes of section 72(p).

"(5) QUALIFIED MILITARY SERVICE.—For purposes of this subsection, the term 'qualified military service' means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter 43, with respect to such service.

"(6) INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection, the term 'individual account plan' means any defined contribution plan and any eligible deferred compensation plan (as defined in section 457(b)).

"(7) REFERENCES.—Any reference in this subsection to chapter 43 of title 38 of the United States Code shall be treated as a reference to such chapter as in effect on January 1, 1993."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply in cases where the employee is reemployed on or after August 1, 1990, but only if there is enacted a law passed by the 102d Congress which amends chapter 43 of title 38 of the United States Code to expressly provide pension rights for reemployed veterans.

(l) COMPUTATION OF ADJUSTMENT OF HEATH INSURANCE TAX CONTRIBUTION BASE.—

(1) IN GENERAL.—Paragraph (2) of section 3121(x) (relating to hospital insurance contribution base) is amended to read as follows:

"(2) HOSPITAL INSURANCE.—For purposes of the taxes imposed by sections 3101(b) and 3111(b), the applicable contribution base for any calendar year is the product of—

"(A) $130,200, and

"(B) the ratio of (i) the deemed average total wages (as defined in section 209(k)(1) of the Social Security Act) for the second preceding calendar year to (ii) the deemed average total wages (as so defined) for 1990.

If the amount determined under the preceding sentence is not a multiple of $300, such amount shall be rounded to the nearest multiple of $300. In no event shall the applicable contribution base for a calendar year determined under this paragraph be less than such applicable contribution base for the preceding calendar year."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective with respect to the determination of the applicable contribution base for years after 1992.

(m) EXEMPTION FROM HARBOR MAINTENANCE TAX FOR CERTAIN PASSENGERS.—

(1) IN GENERAL.—Subparagraph (D) of section 4462(b)(1) (relating to special rule for Alaska, Hawaii, and possessions) is amended by inserting before the period the following: ", or passengers transported on United States flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 1402(a) of the Harbor Maintenance Revenue Act of 1986.

(n) MISCELLANEOUS CLERICAL AMENDMENTS.—

(1) Subclause (II) of section 56(g)(4)(C)(ii) is amended by striking "of the subclause" and inserting "of subclause".

(2) Paragraph (2) of section 72(m) is amended by inserting "and" at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(3) Paragraph (2) of section 86(b) is amended by striking "adusted" and inserting "adjusted".

(4)(A) The heading for section 112 is amended by striking "COMBAT PAY" and inserting "COMBAT ZONE COMPENSATION".

(B) The item relating to section 112 in the table of sections for part III of subchapter B of chapter 1 is amended by striking "combat pay" and inserting "combat zone compensation".

(C) Paragraph (1) of section 3401(a) is amended by striking "combat pay" and inserting "combat zone compensation".

(5) Clause (i) of section 172(h)(3)(B) is amended by striking the comma at the end thereof and inserting a period.

(6) Clause (ii) of section 543(a)(2)(B) is amended by striking "section 563(c)" and inserting "section 563(d)".

(7) Paragraph (1) of section 958(a) is amended by striking "sections 955(b)(1)(A) and (B), 955(c)(2)(A)(ii), and 960(a)(1)" and inserting "section 960(a)(1)".

(8) Subparagraph (B) of section 4092(b)(1) is amended by striking "or" at the end of clause (i).

(9) Subsection (g) of section 642 is amended by striking "under 2621(a)(2)" and inserting "under section 2621(a)(2)".

(10) Section 1463 is amended by striking "this subsection" and inserting "this section".

(11) Subsection (k) of section 3306 is amended by inserting a period at the end thereof.

(12) The item relating to section 4472 in the table of sections for subchapter B of chapter 36 is amended by striking "and special rules".

(13) Paragraph (2) of section 4978(b) is amended by striking the period at the end of subparagraph (A) and inserting a comma, and by striking the period and quotation marks at the end of subparagraph (B) and inserting a comma.

(14) Paragraph (3) of section 5134(c) is amended by striking "section 6662(a)" and inserting "section 6665(a)".

(15) Paragraph (2) of section 5206(f) is amended by striking "section 5(e)" and inserting "section 105(e)".

(16) Paragraph (1) of section 6050B(c) is amended by striking "section 85(c)" and inserting "section 85(b)".

(17) Subsection (k) of section 6166 is amended by striking paragraph (6).

(18) Subsection (e) of section 6214 is amended to read as follows:

"(e) CROSS REFERENCE.—

"For provision giving Tax Court jurisdiction to order a refund of an overpayment and to award sanctions, see section 6512(b)(2)."

(19) The section heading for section 6043 is amended by striking the semicolon and inserting a comma.

(20) The item relating to section 6043 in the table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking the semicolon and inserting a comma.

(21) The table of sections for part I of subchapter A of chapter 68 is amended by striking the item relating to section 6662.

(22)(A) Section 7232 is amended—

(i) by striking "LUBRICATING OIL," in the heading, and

(ii) by striking "lubricating oil," in the text.

(B) The table of sections for part II of subchapter A of chapter 75 is amended by striking "lubricating oil," in the item relating to section 7232.

(23) Paragraph (1) of section 6701(a) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "subclause (IV)" and inserting "subclause (V)".

(24) Clause (ii) of section 7304(a)(2)(D) of such Act is amended by striking "subsection (c)(2)" and inserting "subsection (c)".

(25) Paragraph (1) of section 7646(b) of such Act is amended by striking "section 6050H(b)(1)" and inserting "section 6050H(b)(2)".

(26) Paragraph (10) of section 7721(c) of such Act is amended by striking "section 6662(b)(2)(C)(ii)" and inserting "section 6661(b)(2)(C)(ii)".

(27) Subparagraph (A) of section 7811(i)(3) of such Act is amended by inserting "the first place it appears" before "in clause (i)".

(28) Paragraph (10) of section 7841(d) of such Act is amended by striking "section 381(a)" and inserting "section 381(c)".

(29) Paragraph (2) of section 7861(c) of such Act is amended by inserting "the second place it appears" before "and inserting".

(30) Paragraph (1) of section 460(b) is amended by striking "the look-back method of paragraph (3)" and inserting "the look-back method of paragraph (2)".

(31) The heading for paragraph (2) of section 6427(b) is amended by striking "3-CENT" and inserting "3.1-CENT".

(32) Subparagraph (C) of section 50(a)(2) is amended by striking "subsection (c)(4)" and inserting "subsection (d)(5)".

(33) Subparagraph (B) of section 172(h)(4) is amended by striking the material following the heading and preceding clause (i) and inserting "For purposes of subsection (b)(2)—".

(34) Subparagraph (A) of section 355(d)(7) is amended by inserting "section" before "267(b)".

(35) Subparagraph (C) of section 420(e)(1) is amended by striking "mean" and inserting "means".

(36) Paragraph (4) of section 537(b) is amended by striking "section 172(i)" and inserting "section 172(f)".

(37) Subparagraph (B) of section 613(e)(1) is amended by striking the comma at the end thereof and inserting a period.

(38) Paragraph (4) of section 856(a) is amended by striking "section 582(c)(5)" and inserting "section 582(c)(2)".

(39) Sections 904(f)(2)(B)(i) and 907(c)(4)(B)(iii) are each amended by inserting "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 172(h)".

(40) Subsection (b) of section 936 is amended by striking "subparagraphs (D)(ii)(I)" and inserting "subparagraphs (D)(ii)".

(41) Subsection (c) of section 2104 is amended by striking "subparagraph (A), (C), or (D) of section 861(a)(1)" and inserting "section 861(a)(1)(A)".

(42) Paragraph (1) of section 5002(b) is amended by striking "section 5041(c)" and inserting "section 5041(d)".

(43) Section 6038 is amended by redesignating the subsection relating to cross references as subsection (f).

(44) Clause (iv) of section 6103(e)(1)(A) is amended by striking all that follows "provisions of" and inserting "section 1(g) or 59(j);".

(45) The subsection (f) of section 6109 of the Internal Revenue Code of 1986 which was added by section 2201(d) of Public Law 101-624 is redesignated as subsection (g).

(46) Subsection (b) of section 7454 is amended by striking "section 4955(e)(2)" and inserting "section 4955(f)(2)".

(47) Subsection (d) of section 11231 of the Revenue Reconciliation Act of 1990 shall be applied as if "comma" appeared instead of "period" and as if the paragraph (9) proposed to be added ended with a comma.

(48) Paragraph (1) of section 11303(b) of the Revenue Reconciliation Act of 1990 shall be applied as if "paragraph" appeared instead of "subparagraph" in the material proposed to be stricken.

(49) Subsection (f) of section 11701 of the Revenue Reconciliation Act of 1990 is amended by inserting "(relating to definitions)" after "section 6038(e)".

(50) Subsection (i) of section 11701 of the Revenue Reconciliation Act of 1990 shall be applied as if "subsection" appeared instead of "section" in the material proposed to be stricken.

(51) Subparagraph (B) of section 11801(c)(2) of the Revenue Reconciliation Act of 1990 shall be applied as if "section 56(g)" appeared instead of "section 59(g)".

(52) Subparagraph (C) of section 11801(c)(8) of the Revenue Reconciliation Act of 1990 shall be applied as if "reorganizations" appeared instead of "reorganization" in the material proposed to be stricken.

(53) Subparagraph (H) of section 11801(c)(9) of the Revenue Reconciliation Act of 1990 shall be applied as if "section 1042(c)(1)(B)" appeared instead of "section 1042(c)(2)(B)".

(54) Subparagraph (F) of section 11801(c)(12) of the Revenue Reconciliation Act of 1990 shall be applied as if "and (3)" appeared instead of "and (E)".

(55) Subparagraph (A) of section 11801(c)(22) of the Revenue Reconciliation Act of 1990 shall be applied as if "chapters 21" appeared instead of "chapter 21" in the material proposed to be stricken.

(56) Paragraph (3) of section 11812(b) of the Revenue Reconciliation Act of 1990 shall be applied by not executing the amendment therein to the heading of section 42(d)(5)(B).

(57) Clause (i) of section 11813(b)(9)(A) of the Revenue Reconciliation Act of 1990 shall be applied as if a comma appeared after "(3)(A)(ix)" in the material proposed to be stricken.

(58) Subparagraph (F) of section 11813(b)(13) of the Revenue Reconciliation Act of 1990 shall be applied as if "tax" appeared after "investment" in the material proposed to be stricken.

(59) Paragraph (19) of section 11813(b) of the Revenue Reconciliation Act of 1990 shall be applied as if "Paragraph (20) of section 1016(a), as redesignated by section 11801," appeared instead of "Paragraph (21) of section 1016(a)".

(60) Paragraph (5) section 8002(a) of the Surface Transportation Revenue Act of 1991 shall be applied as if "4481(e)" appeared instead of "4481(c)".

Subtitle B—Tariff and Customs

SEC. 6201. TECHNICAL AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES.

(a) IN GENERAL.—The Harmonized Tariff Schedule of the United States is amended as follows:

(1) REMOVAL OF GDR FROM COLUMN 2 RATE LIST.—General Note 3(b) is amended by striking "German Democratic Republic".

(2) TAPESTRY AND UPHOLSTERY FABRICS.—The article description for subheading 5112.19.20 is amended by striking "of a weight exceeding 300 g/m^2".

(3) GLOVES.—

(A) Chapter 61 is amended by redesignating subheading 6116.10.45 as subheading 6116.10.48.

(B) Chapter 62 is amended by striking the superior text "Other:" that appears between subheadings 6216.00.46 and 6216.00.52.

(4) AGGLOMERATE STONE FLOOR AND WALL TILES.—The article description for subheading 6810.19.12 is amended to read as follows: "Of stone agglomerated with binders other than cement".

(5) 2,4-DIAMINOBENZENESULFONIC ACID.—The article description for heading 9902.30.43 is amended by striking "2921.51.50" and inserting "2921.59.50".

(6) MACHINES USED IN THE MANUFACTURE OF BICYCLE PARTS.—The article description for heading 9902.84.79 is amended by striking "8479.89.90" and inserting "8462.49.00, 8479.89.90 or 9031.80.00".

(7) COPYING MACHINES AND PARTS.—The article description for heading 9902.90.90 is amended by inserting "or 8473.40.40" after "8472.90.80".

(b) STAGED RATE REDUCTIONS FOR GLOVES.—Any staged reduction of a special rate of duty set forth in subheading 6116.10.45 of such Schedule that takes effect on or after October 1, 1990, by reason of section 10011(a)(2) of Omnibus Budget Reconciliation Act of 1990 shall apply to the corresponding rate of duty in subheading 6116.10.48 (as redesignated by subsection (a)(3)(A)).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) shall apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

(2) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—

(A) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer on or before the

90th day after the date of the enactment of this Act, any entry—

(i) that was made after the applicable date and before the 15th day after such date of enactment; and

(ii) with respect to which there would have been a lesser or no duty if any amendment made by subsection (a) applied to such entry;

shall be liquidated or reliquidated as though such amendment applied to such entry.

(B) For purposes of this subsection, the term "applicable date" means—

(i) if such amendment is made by subsection (a)(4) or (a)(7), December 31, 1988; and

(ii) if such amendment is made by subsection (a)(2), (a)(3), (a)(5), (a)(6), September 30, 1990.

SEC. 6202. CLARIFICATION REGARDING THE APPLICATION OF CUSTOMS USER FEES.

(a) IN GENERAL.—Subparagraph (D) of section 13031(b)(8) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(8)(D)) is amended—

(1) by striking "and" at the end of clause (iv);

(2) by striking the period at the end of clause (v) and inserting "; and"; and

(3) by inserting after clause (v) the following new clause:

"(vi) in the case of merchandise entered from a foreign trade zone (other than merchandise to which clause (v) applies), be applied only to the value of the privileged or nonprivileged foreign status merchandise under section 3 of the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81c).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to—

(1) any entry made from a foreign trade zone on or after the 15th day after the date of the enactment of this Act; and

(2) any entry made from a foreign trade zone after November 30, 1986, and before such 15th day if the entry was not liquidated before such 15th day.

(c) APPLICATION OF FEES TO CERTAIN AGRICULTURAL PRODUCTS.—The amendment made by section 111(b)(2)(D)(iv) of the Customs and Trade Act of 1990 shall apply to—

(1) any entry made from a foreign trade zone on or after the 15th day after the date of the enactment of this Act; and

(2) any entry made from a foreign trade zone after November 30, 1986, and before such 15th day if the entry was not liquidated before such 15th day.

SEC. 6203. TECHNICAL AMENDMENTS TO THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988.

(a) IN GENERAL.—Paragraph (2) of section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902(a)(2)) is amended—

(1) in subparagraph (A)—

(A) by striking "the date of enactment of this Act" and inserting "January 1, 1989"; and

(B) by striking "such date of enactment" and inserting "January 1, 1989"; and

(2) in subparagraph (B), by striking "such date of enactment" and inserting "January 1, 1989".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect January 1, 1989.

(c) CONSTRUCTION.—For purposes of applying the amendments made by subsection (a), the column 1-general rate of duty established by any amendment to the Harmonized Tariff Schedule of the United States that was enacted after January 1, 1989, shall, if—

(1) such amendment has, or is statutorily treated as having, an effective date of January 1, 1989; or

(2) application for liquidation or reliquidation at such rate with respect to entries made after December 31, 1988, and before the effective date of the amendment, is provided for;

be treated as the rate in effect on January 1, 1989.

SEC. 6204. TECHNICAL AMENDMENT TO THE CUSTOMS AND TRADE ACT OF 1990.

Subsection (b) of section 484H of the Customs and Trade Act of 1990 (19 U.S.C. 1553 note) is amended by striking ", or withdrawn from warehouse for consumption," and inserting "for transportation in bond".

SEC. 6205. TECHNICAL AMENDMENTS REGARDING CERTAIN BENEFICIARY COUNTRIES.

(a) CARIBBEAN BASIN ECONOMIC RECOVERY ACT.—Section 213(h)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(h)(1)) is amended by adding at the end thereof the following flush sentence:

"The duty reductions provided for under this paragraph shall not apply to textile and apparel articles which are subject to textile agreements.".

(b) ANDEAN TRADE PREFERENCE ACT.—Section 204(c)(1) of the Andean Preference Act (19 U.S.C. 3203(c)(1)) is amended by adding at the end thereof the following flush sentence:

"The duty reductions provided for under this paragraph shall not apply to textile and apparel articles which are subject to textile agreements.".

(c) EFFECTIVE DATE.—The amendments made by this section apply with respect to—

(1) articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act, and

(2) articles entered after December 31, 1991, and before such 15th day, which are not liquidated before such 15th day.

SEC. 6206. CLARIFICATION OF FEES FOR CERTAIN CUSTOMS SERVICES.

(a) IN GENERAL.—Section 13031(b)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(A)) is amended—

(1) by striking "centralized hub facility or" in clause (i); and

(2) in clause (ii)—

(A) by striking "facility—" and inserting "facility or centralized hub facility—",

(B) by striking "customs inspectional" in subclause (I), and

(C) by striking "at the facility" in subclause (I) and inserting "for the facility".

(b) DEFINITIONS.—Section 13031(b)(9)(B)(i) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(B)(i)) is amended—

(1) by striking ", as in effect on July 30, 1990", and

(2) by adding at the end thereof the following new sentence: "Nothing in this paragraph shall be construed as prohibiting the Secretary of the Treasury from processing merchandise that is informally entered or released at any centralized hub facility or express consignment carrier facility during the normal operating hours of the Customs Service, subject to reimbursement and payment under subparagraph (A).".

(c) CITATION.—Section 13031(b)(9)(B)(ii) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(B)(ii)) is amended by striking "section 236 of the Tariff and Trade Act of 1984" and inserting "section 236 of the Trade and Tariff Act of 1984".

TITLE VII—MISCELLANEOUS REVENUE PROVISIONS

Subtitle A—Provisions Primarily Affecting Individuals

SEC. 7101. INCOME EXCLUSION FOR EDUCATION BONDS EXPANDED.

(a) IDENTIFYING INFORMATION REQUIRED.—Section 135(b)(2) is amended to read as follows:

"(2) IDENTIFYING INFORMATION REQUIRED WITH RESPECT TO INDIVIDUAL FOR WHOM EXPENSES PAID.—No amount shall be allowed as an exclusion under subsection (a) unless the taxpayer includes the name, address, and taxpayer identification number of the person for whom qualified higher education expenses were paid on the return on which the exclusion is claimed."

(b) ELIMINATION OF AGE RESTRICTION.—Section 135(c)(1) (defining qualified United States savings bonds) is amended—

(1) by striking subparagraph (B),

(2) by inserting "and" at the end of subparagraph (A), and

(3) by redesignating subparagraph (C) as subparagraph (B).

(c) EXCLUSION EXPANDED TO ALL INDIVIDUALS.—Subparagraph (A) of section 135(c)(2) (defining qualified higher education expenses) is amended to read as follows:

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition and fees required for enrollment or attendance of any individual at an eligible educational institution."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 1989, and redeemed after December 31, 1992.

SEC. 7102. LOSSES ALLOWED AGAINST GAIN RECOGNIZED ON SALE OF PRINCIPAL RESIDENCE.

Section 1001 (relating to determination of amount of and recognition of gain or loss) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) LOSSES ALLOWED AGAINST GAIN RECOGNIZED ON SALE OF PRINCIPAL RESIDENCE.—In the case of an individual, the amount of gain which would (but for this subsection) be recognized on the sale or exchange after December 31, 1993, of a principal residence of such individual shall be reduced (but not below zero) by the aggregate of the losses (if any) sustained by such individual on the sale or exchange after the date of the enactment of this subsection of prior principal residences of such individual which were not allowed as a deduction and which were not previously taken into account under this subsection. For purposes of the preceding sentence, the term 'principal residence' has the same meaning as when used in section 1034."

SEC. 7103. CLARIFICATION OF TREATMENT OF VETERANS' BENEFITS.

(a) IN GENERAL.—Section 134(b)(1) (relating to qualified military benefit) is amended by adding at the end thereof the following flush sentence:

"For purposes of this paragraph, and notwithstanding paragraph (3), the term 'qualified military benefit' includes any allowance or benefit administered by the Secretary of Veterans Affairs."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1984.

SEC. 7104. TREATMENT OF CANCELLATION OF CERTAIN STUDENT LOANS.

(a) IN GENERAL.—

(1) Paragraph (2) of section 108(f) (defining student loan) is amended by striking subparagraph (D) and inserting the following:

"(D) any educational organization so described if such loan is made—

"(i) pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization, or

"(ii) pursuant to a program of such educational organization designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs; except that this clause shall not apply in the case of any discharge if the discharge is on account of services performed for any employer and such employer directly or indirectly provides funds for such discharge.

The term 'student loan' includes any loan made by an educational organization so described or by an organization exempt from tax under section 501(a) to refinance a loan meeting the requirements of the preceding sentence."

(2) The amendment made by paragraph (1) shall apply to discharges of indebtedness after the date of the enactment of this Act.

(b) DISCHARGES OF INDEBTEDNESS UNDER CERTAIN STUDENT LOANS.—

(1) IN GENERAL.—Paragraph (1) of section 108(f) (relating to student loans) is amended—

(A) by inserting "(A)" after "discharged", and

(B) by inserting before the period at the end the following: ", or (B) in the case of a loan made by a State (or from funds provided by a State) which had no accredited professional schools for the study of law or medicine on the date the loan was made, if the individual resided for a certain period of time in the State after completion of the individual's attendance at the educational organization with respect to which the loan was made".

(2) EFFECTIVE DATE; WAIVER OF STATUTE OF LIMITATIONS.—

(A) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to discharges of indebtedness made on or after January 1, 1987.

(B) WAIVER OF STATUTE OF LIMITATIONS.—In the case of any taxable year ending before the date of the enactment of this Act—

(i) the period for claiming a credit or refund of any overpayment of tax resulting from the application of the amendment made by (paragraph (1) shall not expire before the date which is 1 year after the date of the enactment of this Act; and

(B) if, after the application of (clause (i), credit or refund of any overpayment of tax resulting from the application of the amendment made by (paragraph (1) is prevented at any time before the close of such 1-year period by the operation of any law or rule of law (including res judicata), credit or refund of such overpayment (to the extent attributable to the application of the amendment made by paragraph (1)) may, nevertheless, be made or allowed if claim therefore is filed before the close of such 1-year period.

SEC. 7105. IRA ROLLOVERS OF MILITARY SEPARATION PAY.

(a) IN GENERAL.—Section 402(c) (relating to rules applicable to rollovers) is amended by adding at the end the following new paragraph:

"(11) MILITARY SEPARATION PAY.—If—

"(A) an individual receives separation pay under section 1174 or 1174a of title 10, United States Code, and

"(B) such individual transfers any portion of such pay within 60 days after the receipt of such pay to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B),

then the portion of the pay so transferred (to the extent it does not exceed $25,000) shall be treated as a transfer from a qualified trust which meets the requirements of this subsection and which is a transfer of a distribution of amounts other than employee contributions."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to pay received after December 5, 1991.

(2) TRANSITION RULE.—In the case of any payment received after December 5, 1991, and before the date of the enactment of this Act, the 60-day transfer requirement of section 402(c)(11)(B) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall be treated as met if the taxpayer transfers the payment to an eligible retirement plan within 1 year after such date of enactment.

SEC. 7106. MODIFICATION OF INVOLUNTARY CONVERSION RULES FOR CERTAIN DISASTER-RELATED CONVERSIONS.

(a) IN GENERAL.—Section 1033 (relating to involuntary conversions) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) SPECIAL RULES FOR PRINCIPAL RESIDENCES DAMAGED BY PRESIDENTIALLY DECLARED DISASTERS.—

"(1) IN GENERAL.—If the taxpayer's principal residence or any of its contents is compulsorily or involuntarily converted as a result of a Presidentially declared disaster—

"(A) TREATMENT OF INSURANCE PROCEEDS.—

"(i) EXCLUSION FOR UNSCHEDULED PERSONAL PROPERTY.—No gain shall be recognized by reason of the receipt of any insurance proceeds for personal property which was part of such contents and which was not scheduled property for purposes of such insurance.

"(ii) OTHER PROCEEDS TREATED AS COMMON FUND.—In the case of any insurance proceeds (not described in clause (i)) for such residence or contents—

"(I) such proceeds shall be treated as received for the conversion of a single item of property, and

"(II) any property which is similar or related in service or use to the residence so converted (or contents thereof) shall be treated for purposes of subsection (a)(2) as property similar or related in service or use to such single item of property.

"(B) EXTENSION OF REPLACEMENT PERIOD.—Subsection (a)(2)(B) shall be applied with respect to any property so converted by substituting '4 years' for '2 years'.

"(2) PRESIDENTIALLY DECLARED DISASTER.—For purposes of this subsection, the term 'Presidentially declared disaster' means any disaster which, with respect to the area in which the residence is located, resulted in a subsequent determination by the President that such area warrants assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act.

"(3) PRINCIPAL RESIDENCE.—For purposes of this subsection, the term 'principal residence' has the same meaning as when used in section 1034, except that no ownership requirement shall be imposed."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property compulsorily or involuntarily converted as a result of disasters for which the determination referred to in section

1033(h)(2) of the Internal Revenue Code of 1986 (as added by this section) is made on or after September 1, 1991, and to taxable years ending on or after such date.

SEC. 7107. CERTAIN FOSTER CARE PAYMENTS EXCLUDED FROM GROSS INCOME.

(a) TREATMENT OF PAYMENTS.—Subparagraph (A) of section 131(b)(1) (defining qualified foster care payment) is amended to read as follows:

"(A) which is—

"(i) paid by a State or political subdivision thereof or a placement agency which is described in section 501(c)(3) and exempt from tax under section 501(a), or

"(ii) paid by the Federal Government and taken into account by such State, political subdivision, or placement agency in determining the amount of a payment described in clause (i), and".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payments made on or after the date of the enactment of this Act.

SEC. 7108. PENALTY FREE WITHDRAWALS FROM ANNUITIES FOR HIGHER EDUCATION EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 72(q) (relating to 10-percent penalty for premature distributions from annuity contracts) is amended by striking "or" at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting ", or", and by inserting after subparagraph (J) the following new subparagraph:

"(K) which is a qualified higher education expense distribution (as defined in paragraph (4))."

(b) QUALIFIED HIGHER EDUCATION EXPENSE DISTRIBUTION.—Subsection (q) of section 72 is amended by adding at the end thereof the following new paragraph:

"(4) QUALIFIED HIGHER EDUCATION EXPENSE DISTRIBUTION.—

"(A) IN GENERAL.—For purposes of paragraph (2)(K), the term 'qualified higher education expense distribution' means any distribution from a designated higher education expense annuity to the taxpayer if such distribution is used within 90 days of the date of the distribution to pay qualified tuition and related expenses (as defined in section 117(b)) required for the enrollment or attendance of such taxpayer, the taxpayer's spouse, or a child (as defined in section 151(c)(3)) or grandchild of such taxpayer at an eligible educational institution (as defined in section 135(c)(3)); except that such expenses shall be reduced by any amount excluded from gross income under section 135 by reason of such expenses.

"(B) DESIGNATED HIGHER EDUCATION EXPENSE ANNUITY.—

"(i) IN GENERAL.—The term 'designated higher education expense annuity' means any annuity purchased after December 31, 1992, and designated for purposes of this paragraph by the purchaser at the time

of purchase as an annuity to which this paragraph applies.

"(ii) CERTAIN ANNUITIES RECEIVED IN AN EXCHANGE NOT ELIGIBLE.—Such term shall not include any annuity acquired in an exchange to which section 1035 applies unless the annuity given up by the taxpayer in the exchange was a designated higher education expense annuity."

(c) GIFT TAX TREATMENT.—Subsection (e) of section 2503 is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF PREMIUMS PAID UNDER DESIGNATED HIGHER EDUCATION EXPENSE ANNUITIES.—

"(A) IN GENERAL.—Any premium paid for a designated higher education expense annuity shall not be treated as transfer of property by gift for purposes of this chapter.

"(B) RECAPTURE RULES.—If any premium paid by any person for a designated higher education expense annuity is not treated as a taxable gift solely by reason of subparagraph (A)—

"(i) LIFETIME DISTRIBUTIONS NOT USED FOR EDUCATIONAL PURPOSES.—Any disqualified lifetime distribution from the portion of any annuity attributable to such premium shall be treated as a transfer by gift by such person.

"(ii) INCLUSION IN GROSS ESTATE.—The gross estate of such person shall include the value (as of the date of the decedent's death or applicable valuation date set forth in section 2032) of the portion of any annuity attributable to such premium.

"(C) DISQUALIFIED LIFETIME DISTRIBUTION.—For purposes of subparagraph (B), the term 'disqualified lifetime distribution' means any distribution which is not a qualified higher education distribution and which is made during the life of the person referred to in subparagraph (B) to or for the benefit of another person.

"(D) OTHER DEFINITIONS.—For purposes of this paragraph, the terms 'designated higher education expense annuity' and 'qualified higher education expense distribution' have the respective meanings given such terms by section 72(q)(4)."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993.

SEC. 7109. APPLICATION OF LOW-INCOME HOUSING CREDITS AND MORTGAGE REVENUE BONDS TO NATURAL DISASTER AREAS.

(a) LOW-INCOME HOUSING CREDITS.—

(1) WAIVER OF 24-MONTH COMPLETION REQUIREMENT.—In the case of any qualified building located in a qualified disaster area with respect to which a low-income housing allocation is made before the occurrence of the natural disaster, the Secretary may extend the period described in section 42(h)(1)(E)(i) of the Internal Revenue Code of 1986 to not later than the close of the fourth calendar year following the calendar year in which the allocation is made."

(2) WAIVER OF WRITTEN INCOME VERIFICATION REQUIREMENT.—

(A) IN GENERAL.—With respect any occupant of a low-income unit in any qualified low-income building located in a qualified disaster area or any such occupant in any other qualified low-income building who immediately prior to such occupation resided in a qualified disaster area, the Secretary may waive the requirements of paragraphs (1) and (2) of section 42(l) of such Code regarding occupant income information until such information is reasonably obtainable.

(B) DISCOVERY OF INELIGIBILITY.—If upon receipt of such information the income of any occupant of a low-income unit in the building is determined to exceed the income limitation under section 42(g) of such Code, such unit shall continue to be treated as a low-income unit if no subsequently available residential rental unit in the building is occupied by a new resident whose income exceeds such income limitation and such occupant vacates the unit upon the later of the lease termination or 30 days after receipt of such information by the Secretary.

(3) WAIVER OF TENANT INCOME LIMITATIONS.—With respect to any tenant occupying a unit in a qualified low-income housing project located in a qualified disaster area who relocates to any other unit of a qualified low-income housing project, the Secretary may waive the income limitation of subparagraph (A) or (B) of section 42(g)(1) of such Code if the income of such tenant does not exceed 140 percent of such income limitation.

(4) WAIVER OF 6-MONTH RESIDENCE REQUIREMENT.—With respect to any unit in a building located in a qualified disaster area or any unit occupied by individuals who immediately prior to such occupation resided in a qualified disaster area, the Secretary may waive the requirement of clause (i) of section 42(i)(3)(B) of such Code and allow the use of such unit on a transient basis.

(5) WAIVER ON 10-YEAR RULE FOR EXISTING BUILDINGS.—The Secretary may waive the requirement of subparagraph (B)(ii) of section 42(d)(2) of such Code with respect to any building located in a qualified disaster area.

(6) WAIVER OF THE NATIONAL POOL ALLOCATION.—The Secretary may modify the formula described in the penultimate sentence of section 42(h)(3)(D)(iii) of such Code for any calendar year with respect to the allocation to any qualified State in which is located a qualified disaster area to increase such allocation to take into account the effects of such disaster.

(7) EFFECTIVE DATE.—This subsection shall take effect on July 1, 1992.

(b) WAIVER OF DOLLAR LIMITATION FOR HOME IMPROVEMENT LOANS FOR RESIDENCES IN QUALIFIED DISASTER AREAS.—The $15,000 limitation specified in the last sentence of section 143(k)(4) of such Code shall not apply to any loan for residences located in a qualified disaster area if such loan is made on or after June 30, 1992, and before January 1, 1994.

(c) QUALIFIED DISASTER AREA.—For purposes of this section, the term "qualified disaster area" means an area designated by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Andrew, Hurricane Iniki, or Typhoon Omar.

Subtitle B—Charitable Contribution Provisions

SEC. 7201. ALTERNATIVE MINIMUM TAX TREATMENT.

(a) REPEAL OF TAX PREFERENCE.—Subsection (a) of section 57 is amended by striking paragraph (6) (relating to the appreciated property charitable deduction under the alternative minimum tax) and by redesignating paragraph (7) as paragraph (6).

(b) CONFORMING AMENDMENT.—Subclause (II) of section 53(d)(1)(B)(ii) is amended by striking ", (5), and (6)" and inserting "and (5)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after December 31, 1991, except that in the case of any contribution of capital gain property which is not tangible personal property, such amendments shall apply only if the contribution is made after December 31, 1992.

(d) REPORT ON ADVANCE DETERMINATION OF VALUE OF CHARITABLE GIFTS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the development of a procedure under which taxpayers may elect to seek an agreement with the Secretary as to the value of tangible personal property prior to the donation of such property to a qualifying charitable organization if the time limits for the donation and other conditions contained in the agreement are satisfied. Such report shall address the setting of possible threshold amounts for claimed value (and the payment of fees) by a taxpayer in order to seek agreement under the procedure, possible limitations on applying the procedure only to items with significant artistic or cultural value, recommendations for legislative action needed to implement the proposed procedure.

SEC. 7202. SUBSTANTIATION REQUIREMENT FOR DEDUCTION OF CERTAIN CHARITABLE CONTRIBUTIONS.

(a) SUBSTANTIATION REQUIREMENT.—Section 170(f) (providing special rules relating to the deduction of charitable contributions and gifts) is amended by adding at the end the following new paragraph:

"(8) SUBSTANTIATION REQUIREMENT FOR CERTAIN CONTRIBUTIONS.—

"(A) GENERAL RULE.—No deduction shall be allowed under subsection (a) for any contribution of $750 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

"(B) CONTENT OF ACKNOWLEDGMENT.—An acknowledgment meets the requirements of this subparagraph (B) if it

provides information sufficient to substantiate the amount of the deductible contribution. If the contribution was made by means of a payment part of which constituted consideration for goods or services provided by the donee organization, the acknowledgment must provide a good faith estimate of the value of such goods or services.

"(C) CONTEMPORANEOUS.—For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of—

"(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

"(ii) the due date (including extensions) for filing such return.

"(D) SUBSTANTIATION NOT REQUIRED FOR CONTRIBUTIONS REPORTED BY THE DONEE ORGANIZATION.—Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

"(E) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases."

(b) EFFECTIVE DATE.—The provisions of this section shall apply to contributions made on or after January 1, 1994.

SEC. 7203. DISCLOSURE RELATED TO QUID PRO QUO CONTRIBUTIONS.

(a) DISCLOSURE REQUIREMENT.—Subchapter B of chapter 61 (relating to information and returns) is amended by redesignating section 6115 as section 6116 and by inserting after section 6114 the following new section:

"SEC. 6115. DISCLOSURE RELATED TO QUID PRO QUO CONTRIBUTIONS.

"(a) DISCLOSURE REQUIREMENT.—If an organization described in section 170(c) (other than paragraph (1) thereof) receives a quid pro quo contribution, the organization shall, in connection with the solicitation or receipt of the contribution—

"(1) inform the donor that the amount of the contribution that is deductible for Federal income tax purposes is limited to the excess of the amount of any money and the value of any property other than money contributed by the donor over the value of the goods or services provided by the organization, and

"(2) provide the donor with a good faith estimate of the value of such goods or services.

"(b) QUID PRO QUO CONTRIBUTION.—For purposes of this section, the term 'quid pro quo contribution' means a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization."

(b) PENALTY FOR FAILURE TO DISCLOSE.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6713 the following new section:

"SEC. 6714. FAILURE TO MEET DISCLOSURE REQUIREMENTS APPLICABLE TO QUID PRO QUO CONTRIBUTIONS.

"(a) IMPOSITION OF PENALTY.—If an organization fails to meet the disclosure requirement of section 6115 with respect to a quid pro quo contribution, such organization shall pay a penalty of $10 for each contribution in respect of which the organization fails to make the required disclosure, except that the total penalty imposed by this subsection with respect to a particular fundraising event or mailing shall not exceed $5,000.

"(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause."

(c) CLERICAL AMENDMENTS.—

(1) The table for subchapter B of chapter 61 is amended by striking the item relating to section 6115 and inserting the following new item:

"Sec. 6115. Disclosure related to quid pro quo contributions.
"Sec. 6116. Cross reference."

(2) The table for part I of subchapter B of chapter 68 is amended by inserting after the item for section 6713 the following new item:

"Sec. 6714. Failure to meet disclosure requirements applicable to quid pro quo contributions."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The provisions of this section shall apply to quid pro quo contributions made on or after January 1, 1994.

(2) REGULATIONS.—The Secretary of the Treasury or his delegate shall, not later than July 1, 1993, prescribe such regulations as are necessary to implement the amendments made by this section and section 7202.

SEC. 7204. CERTAIN ORGANIZATIONS REQUIRED TO DISCLOSE NONEXEMPT STATUS.

(a) GENERAL RULE.—Subchapter B of chapter 61 (relating to miscellaneous provisions) is amended by redesignating section 6115 as section 6116 and by inserting after section 6114 the following new section:

"SEC. 6115. CERTAIN ORGANIZATIONS REQUIRED TO DISCLOSE NONEXEMPT STATUS.

"(a) IN GENERAL.—If—

"(1) in an advertisement or solicitation by (or on behalf of) an organization, such organization is referred to as being nonprofit, and

"(2) such organization is not exempt from tax under subtitle A,

such advertisement or solicitation shall contain an express statement (in a conspicuous and easily recognizable format) that such organization is not exempt from Federal income taxes.

"(b) CROSS REFERENCE.—

"For penalties for violation of subsection (a), see section 6714."

(b) PENALTY.—Part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new section:

"SEC. 6714. FAILURE TO DISCLOSE NONEXEMPT STATUS.

"(a) IMPOSITION OF PENALTY.—If there is a failure to meet the requirements of section 6115 with respect to any advertisement or solicitation by (or on behalf of) an organization, such organization shall pay a penalty of $1,000 for each day on which such a failure occurred. The maximum penalty imposed under this subsection on failures by any organization during any calendar year shall not exceed $10,000.

"(b) REASONABLE CAUSE EXEMPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

"(c) $10,000 LIMITATION NOT TO APPLY WHERE INTENTIONAL DISREGARD.—If any failure to which subsection (a) applies is due to intentional disregard of the requirements of section 6115—

"(1) the penalty under subsection (a) for the day on which failure occurred shall be the greater of—

"(A) $1,000, or

"(B) 50 percent of the aggregate cost of the advertisements and solicitations which occurred on such day and with respect to which there was such failure,

"(2) the $10,000 limitation of subsection (a) shall not apply to any penalty under subsection (a) for the day on which such failure occurred, and

"(3) such penalty shall not be taken into account in applying such limitation to other penalties under subsection (a).

"(d) DAY ON WHICH FAILURE OCCURS.—For purposes of this section, rules similar to the rules of section 6710(d) shall apply in determining the day on which any failure occurs."

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for subchapter B of chapter 61 is amended by striking the item relating to section 6115 and inserting the following:

"Sec. 6115. Certain organizations required to disclose nonexempt status.
"Sec. 6116. Cross reference."

(2) The table of sections of part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6714. Failure to disclose nonexempt status."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993.

SEC. 7205. EXEMPT ORGANIZATIONS REQUIRED TO PROVIDE COPY OF RETURN.

(a) GENERAL RULE.—

(1) Subparagraph (A) of section 6104(e)(1) (relating to public inspection of annual returns) is amended to read as follows:

"(A) IN GENERAL.—During the 3-year period beginning on the filing date—

"(i) a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the

principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

"(ii) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return shall be provided to such individual without charge other than a reasonable fee for the cost of reproduction.

If the request under clause (ii) is made in person, such copy shall be provided immediately and, if made other than in person, shall be provided within 30 days."

(2) Clause (ii) of section 6104(e)(2)(A) is amended by inserting before the period at the end thereof the following: "(and, upon request of an individual made at such principal office or such a regional or district office, a copy of the material required to be available for inspection under this subparagraph shall be provided (in accordance with the last sentence of paragraph (1)(A)) to such individual without charge other than a reasonable fee for the cost of reproduction)".

(b) ADVERTISEMENTS ETC., REQUIRED TO DISCLOSE AVAILABILITY OF ANNUAL RETURN.—

(1) Paragraph (1) of section 6104(e) is amended byadding at the end thereof the following new subparagraph:

"(E) ADVERTISEMENTS ETC., REQUIRED TO DISCLOSE AVAILABILITY OF ANNUAL RETURN.—In the case of an organization required by subparagraph (A) to provide a copy of its annual return under section 6033 upon request to individuals, each advertisement or solicitation by (or on behalf of) such organization shall contain an express statement (in a conspicuous and easily recognizable format) that such return shall be provided to individuals upon request without charge other than a reasonable fee for the cost of reproduction."

(2) Section 6714 is amended—

(A) by striking "section 6115" each place it appears and inserting "section 6115 or section 6104(e)(1)(E)",

(B) by striking "$1,000" in subsection (a) and inserting "$1,000 ($100 in the case of a failure to meet the requirements of 6104(e)(1)(E))", and

*(C) by inserting before the period at the end of the section heading "; **FAILURE OF CERTAIN EXEMPT ORGANIZATIONS TO DISCLOSE AVAILABILITY OF ANNUAL RETURN**".*

(3) Subparagraph (C) of section 6652(c)(1) is amended by striking "(e)(1)" and inserting "(e)(1) (other than subparagraph (E))", and by striking "$10" and inserting "$50".

(4) Subparagraph (D) of section 6652(c)(1) is amended by striking "$10" and inserting "$50".

(5) The item relating to section 6714 in the table of sections for part I of subchapter B of chapter 68 is amended by inserting before the period "; failure of certain exempt organizations to disclose availability of annual return".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993.

Subtitle C—Other Provisions Relating to Tax-Exempt Organizations

SEC. 7301. REQUIRED NOTICES TO CHARITABLE BENEFICIARIES OF CHARITABLE REMAINDER TRUSTS.

(a) GENERAL RULE.—

(1) Section 6036 is amended—

(A) by striking "Every receiver" and inserting "(a) GENERAL RULE.—Every receiver", and

(B) by adding at the end thereof the following new subsection:

"(b) SPECIAL RULE FOR TRANSFERS OF REMAINDER INTERESTS DESCRIBED IN SECTION 2055(e)(2)(A).—In the case of an estate claiming a charitable contribution deduction for the value of a transfer of a remainder interest in property described in section 2055(e)(2)(A), the executor or other fiduciary shall provide written notices to each organization described in section 2055(a) which has such an interest in the time and manner set forth in the following paragraphs:

"(1) QUALIFICATION NOTICE.—Within 60 days of the date of the executor's qualification, the charitable beneficiary shall be notified of such qualification and such notice shall include—

"(A) the name, address, and date of death of the decedent;

"(B) the name, address, and identification number of each fiduciary of the estate;

"(C) the name and address of each charitable beneficiary;

"(D) a copy of the governing instrument relating to the transfer in trust; and

"(E) a description of the interest to which such charitable organization may be entitled, and any preliminary statements (if required by law) on the financial condition of the estate.

"(2) TAX RETURN FILING NOTICE.—On or before the due date for the filing of a Federal estate tax return on which a charitable deduction is claimed, the charitable beneficiary shall be notified of such filing and such notice shall include—

"(A) a copy of the pertinent parts of the Federal estate tax return, and

"(B) such other information as may be required by form or regulation.

If any notice is provided to a charitable beneficiary under paragraph (1), no notice shall be required to be provided to such beneficiary under paragraph (2) unless such beneficiary agrees to reimburse the executor or other fiduciary for the reasonable costs of providing such notice."

(2) Section 6034A is amended by adding at the end thereof the following new subsection:

"(c) ANNUAL NOTICE TO CHARITABLE REMAINDER BENEFICIARY.—

"(1) In general.—The fiduciary of any charitable remainder trust required to file any return under chapter 61 for any taxable year shall, on or before the date on which such return is required to be filed, furnish each charitable beneficiary—

"(A) a copy of such return (including all schedules), and

"(B) such other information (or deletions) for purposes of carrying out the internal revenue laws as the Secretary may require.

If a fiduciary furnishes the information required under the preceding sentence to any charitable beneficiary with respect to any trust taxable year, such fiduciary shall not be required to furnish information under the preceding sentence to such beneficiary with respect to any subsequent trust taxable year unless such beneficiary agrees to reimburse such fiduciary for the reasonable costs of furnishing such information.

"(2) Penalties.—

"For provisions relating to the failure to furnish on a timely or complete basis the information required under paragraph (1), see section 6652(c)."

(b) Penalties.—

(1) Paragraph (2) of section 6652(c) is amended to read as follows:

"(2) Returns under section 6034 or 6043(b) and notices under section 6034A(c) or 6036(b).—

"(A) Penalty on organization, trust, or fiduciary.—In the case of—

"(i) a failure to file a return required under section 6034 (relating to returns by certain trusts) or section 6043(b) (relating to terminations, etc., of exempt organizations),

"(ii) a failure to furnish any notice required under section 6034A(c) (relating to annual notice to charitable remainder beneficiary), or

"(iii) a failure to furnish any notice required under section 6036(b) (relating to a qualification notice or tax return filing notice),

on the date and in the manner prescribed therefore (determined with regard to any extension of time for filing), there shall be paid by the organization, trust, or fiduciary failing to file such return (or furnish such notice) $10 for each day during which such failure continues, but the total amount imposed under this subparagraph on any organization, trust, or fiduciary for failure to file any 1 return (or furnish any 1 notice) shall not exceed $5,000.

"(B) Managers.—The Secretary may make written demand on an organization, trust, or fiduciary failing to file any return (or furnish any notice) under subparagraph (A) specifying therein a reasonable future date by which such filing (or furnishing) shall be made for purposes of this subparagraph. If such filing (or furnishing) is not made on or before such date, there shall be paid by the person responsible for failing to so file (or furnish) $10 for each day after the expiration of the time specified in the

written demand during which such failure continues, but the total amount imposed under this subparagraph on all persons for failure to file any 1 return (or furnish any 1 notice) shall not exceed $5,000."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 7302. APPLICATION OF PRIVATE INUREMENT RULE TO TAX-EXEMPT CIVIC LEAGUES.

(a) IN GENERAL.—Paragraph (4) of section 501(c) (relating to list of exempt organizations) is amended to read as follows:

"(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"(B) Local associations of employees—

"(i) the membership of which is limited to the employees of a designated person or persons in a particular municipality,

"(ii) which is operated exclusively for charitable, educational, or recreational purposes, and

"(iii) no part of the net earnings of which inures to the benefit of any private shareholder or individual."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 7303. EXCLUSION FROM UNRELATED BUSINESS TAXABLE INCOME FOR CERTAIN SPONSORSHIP PAYMENTS.

(a) IN GENERAL.—Section 513 (relating to unrelated business taxable income) is amended by adding at the end thereof the following new subsection:

"(i) TREATMENT OF CERTAIN SPONSORSHIP PAYMENTS.—

"(1) IN GENERAL.—The term 'unrelated trade or business' does not include the activity of soliciting and receiving qualified sponsorship payments with respect to any qualified public event.

"(2) QUALIFIED SPONSORSHIP PAYMENTS.—For purposes of this subsection, the term 'qualified sponsorship payment' means any payment by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than—

"(A) the use of the name or logo of such person's trade or business in connection with any qualified public event under arrangements (including advertising) in connection with such event which acknowledge such person's sponsorship or promote such person's products or services, or

"(B) the furnishing of facilities, services, or other privileges in connection with such event to individuals designated by such person.

"(3) QUALIFIED PUBLIC EVENT.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified public event' means any event conducted by an organization described in paragraph (3), (4), (5), or (6) of

section 501(c) or by an organization described in section 511(a)(2)(B) if such event is—

"(i) a public event the conduct of which is substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exempt purposes of the organization conducting such event, or

"(ii) any public event not described in clause (i) but only if such event is the only event of that type conducted by such organization during a calendar year and such event does not exceed 30 consecutive days.

An event shall be treated as a qualified public event with respect to all organizations referred to in the preceding sentence which receive sponsorship payments with respect to such event if such event is a qualified public event with respect to 1 of such organizations; except that a payment shall be treated as not being from an unrelated trade or business by reason of this sentence only to the extent that such payment is used to meet the expenses of such event or for the benefit of the organization with respect to which such event is a qualified public event (determined without regard to this sentence).

"(B) EXEMPT PURPOSE.—For purposes of subparagraph (A), the term 'exempt purpose' means any purpose or function constituting the basis for the organization's exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), the exercise or performance of any purpose or function described in section 501(c)(3)).

"(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the purposes of this subsection through the use of entities under common control."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to events conducted after the date of the enactment of this Act.

SEC. 7304. TREATMENT OF CERTAIN AMOUNTS RECEIVED BY OLYMPIC ORGANIZATIONS.

In the case of a qualified amateur sports organization described in section 501(j)(2) or an organization which would be so described but for the cultural events it organizes in connection with national or international amateur sports competitions—

(1) for purposes of section 512(b) of such Code, the term "royalty" includes any income received (directly or indirectly) by such organization if a substantial part of the consideration for such income is the right to use trademarks, designations, or similar properties indicating a connection with the Olympic Games to be conducted in 1996 or related events or the participation of the United States Olympic Team at such Games or events, and

(2) nothing in section 514 or 512(b) of such Code shall be construed as treating any amount treated as royalty under paragraph (1) as an item of income from an unrelated trade or business.

SEC. 7306. CHANGES IN APPLICATION OF WAGERING TAXES TO CHARITABLE ORGANIZATIONS.

(a) EXEMPTION FROM OCCUPATIONAL TAX FOR CHARITABLE ORGANIZATIONS.—Section 4411 (relating to occupational tax on wagering) is amended by adding at the end thereof the following new subsection:

"(c) EXCEPTION FOR CHARITABLE ORGANIZATIONS, ETC.—No tax shall be imposed by subsection (a) on—

"(1) any organization exempt from tax under section 501 or 521, and

"(2) any person who is engaged in receiving wagers only for or on behalf of such an organization,

if the only wagers accepted by such organization (and such person) are authorized under the law of the State in which accepted."

(b) EXCEPTION FROM WAGERING TAX FOR CHARITABLE ORGANIZATIONS.—Section 4402 (relating to exemptions from tax on wagers) is amended by inserting "(a) IN GENERAL.—" before "No tax" and by adding at the end thereof the following new subsection:

"(b) CHARITABLE ORGANIZATIONS, ETC.—

"(1) EXEMPTION WHERE CHARITABLE EXPENDITURES EXCEED WINNINGS.—If the amount of charitable expenditures of any organization described in section 4411(c) for any calendar quarter equals or exceeds the amount of wagering winnings of such organization for such quarter, no tax shall be imposed by this subchapter on wagers placed during such calendar quarter with such organization or with any person described in section 4411(c)(2) with respect to such organization.

"(2) REDUCTION OF TAX WHERE WINNINGS EXCEED CHARITABLE EXPENDITURES.—

"(A) IN GENERAL.—If paragraph (1) does not apply to an organization or person described in section 4411(c) for any calendar quarter, the tax imposed by this subchapter on wagers placed with such organization or person during such quarter shall be the applicable percentage of the tax which would (but for this paragraph) be imposed on such wagers during such quarter.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage for any calendar quarter is the excess of 100 percent over the percentage which the charitable expenditures of such organization for such quarter is of the wagering winnings of such organization for such quarter.

"(3) DEFINITIONS AND SPECIAL RULE.—For purposes of this subsection—

"(A) CHARITABLE EXPENDITURES.—The term 'charitable expenditures' means for any calendar quarter, the sum of—

"(i) the amount paid by such organization during such quarter to accomplish 1 or more of the purposes described in section 170(c)(2)(B) or to acquire an asset used (or held for use) directly in carrying out 1 or more of such purposes, and

"(ii) the amount permanently set-aside by such organization during such quarter for 1 or more of such purposes.

"(B) WAGERING WINNINGS.—The term 'wagering winnings' means, with respect to any calendar quarter, the excess of the wagers which would (but for this subsection) be subject to tax under this subchapter and which are placed with the organization during such calendar quarter over the winnings paid on such wagers.

"(C) SPECIAL RULE.—Wagers received by any person for or on behalf of an organization shall be treated as received by such organization."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxes imposed for periods beginning after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to wagers placed in calendar quarters beginning after the date of the enactment of this Act.

SEC. 7307. CONDUCTING OF CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS.

(a) IN GENERAL.—Paragraph (1) of section 513(f) (relating to certain bingo games) is amended by inserting before the period "or other qualified games of chance".

(b) OTHER QUALIFIED GAMES OF CHANCE.—Subsection (f) of section 513 is amended by adding at the end thereof the following new paragraph:

"(3) OTHER QUALIFIED GAMES OF CHANCE.—For purposes of paragraph (1), the term 'other qualified game of chance' means any game of chance (other than bingo) if—

"(A) the conducting of such game by the organization does not violate State or local law,

"(B) the conducting of such game by organizations which are not nonprofit organizations would violate such law, and

"(C) no substantial part of the work in conducting such game is performed by individuals principally engaged in performing gaming services for hire."

(c) CLERICAL AMENDMENT.—The subsection heading of section 513(f) is amended by striking "BINGO GAMES" and inserting "GAMES OF CHANCE".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to games conducted after the date of the enactment of this Act.

SEC. 7308. TREATMENT OF CERTAIN NONPROFIT ORGANIZATIONS PROVIDING HEALTH BENEFITS.

(a) GENERAL RULE.—Paragraph (2) of section 833(c) (defining existing Blue Cross or Blue Shield organization) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, an organization which is not a Blue Cross or Blue Shield organization shall be treated as subject to this paragraph if such organization is not a health maintenance organization and is organized under and governed by State laws which are specifically and exclusively applicable to not-for-profit health insurance or health service type organizations.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

SEC. 7309. TREATMENT OF INDIAN TRIBAL GOVERNMENTS UNDER SECTION 403(b).

In the case of any contract purchased in a plan year beginning before January 1, 1993, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

SEC. 7310. CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFYING DISTRIBUTION.

(a) IN GENERAL.—In the case of any taxable year beginning after the date of the enactment of this Act, the distributable amount of a private foundation for such taxable year for purposes of section 4942 of the Internal Revenue Code of 1986 shall be reduced (but not below zero) 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 only apply 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 11, 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 nonconsensual 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.

SEC. 7311. UNRELATED BUSINESS INCOME TAX TREATMENT OF MAILING LISTS.

(a) IN GENERAL.—Section 513 (defining unrelated trade or business) is amended by adding at the end the following new subsection:

"(i) EXCHANGES AND RENTALS OF MEMBER LISTS.—

"(1) IN GENERAL.—In the case of an organization to which this subsection applies for any taxable year, the term 'unrelated trade or business' does not include any trade or business which consists of—

"(A) exchanging names and addresses of donors to (or members of) such organization with any other such organization, or

"(B) renting such names and addresses to any other such organization, but only if the aggregate income from such rental activity for the taxable year does not exceed 10 percent of the organization's gross revenue for the taxable year.

"(2) ORGANIZATIONS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

"(A) any organization which is described in section 501 and contributions to which are deductible under paragraph (2) or (3) of section 170(c), and

"(B) any organization described in section 501(c)(4)."

(b) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 513(h) is amended by striking "include—" and all that follows and inserting "include activities relating to the distribution of low cost articles if the distribution of such articles is incidental to the solicitation of charitable contributions."

(2) The subsection heading for section 513(h) is amended by striking "AND EXCHANGES AND RENTALS OF MEMBER LISTS".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to exchanges and rentals of member lists before, on, or after the date of the enactment of this Act; except that the amendment made by subsection (b)(1) shall take effect on the date of the enactment of this Act.

Subtitle D—Employee Benefit Provisions

SEC. 7401. TREATMENT OF CERTAIN REIMBURSED FLIGHT TRAINING EXPENSES.

(a) IN GENERAL.—In the case of a taxable year beginning before January 1, 1980, the determination of whether a deduction is allowable under section 162(a) of the Internal Revenue Code of 1954 for flight training expenses shall be made without regard to whether the taxpayer was reimbursed for any portion of such expenses under section 1677(b) of title 38, United States Code (as in effect before its repeal by Public Law 97–35).

(b) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of subsection (a) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of subsection (a)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

SEC. 7402. TREATMENT OF CERTAIN SECURITIES TRANSFERRED TO ESOP FROM TERMINATED PENSION PLAN.

Subsection (b) of section 7302 of the Revenue Reconciliation Act of 1989 is amended by adding at the end thereof the following new paragraph:

"(3) SECURITIES ACQUIRED PURSUANT TO SECTION 4980(C)(3).—The amendment made by this section shall not apply to employer securities acquired before October 1, 1989, pursuant to section 4980(c)(3) of the Internal Revenue Code of 1986 with assets transferred from a defined benefit pension plan the termination of which was the subject of a determination letter issued by the Internal Revenue Service which was in effect on August 4, 1989, and at all times thereafter before such securities were acquired."

SEC. 7403. TREATMENT OF CERTAIN DISABILITY BENEFITS RECEIVED BY FORMER POLICE OFFICERS OR FIREFIGHTERS.

(a) GENERAL RULE.—For purposes of determining whether any amount to which this section applies is excludable from gross income under section 104(a)(1) of the Internal Revenue Code of 1986, the following conditions shall be treated as personal injuries or sickness in the course of employment:

(1) Heart disease.

(2) Hypertension.

(b) AMOUNTS TO WHICH SECTION APPLIES.—This section shall apply to any amount—

(1) which is payable to an individual (or to the survivors of an individual) who was a full-time employee of any police department or fire department which is organized and operated by a State, by any political subdivision thereof, or by any agency or instrumentality of a State or political subdivision thereof; and

(2) which is received in calendar year 1989, 1990, or 1991.

For purposes of the preceding sentence, the term "State" includes the District of Columbia.

SEC. 7404. FRINGE BENEFITS OF AIRLINE AFFILIATE EMPLOYEES.

(a) QUALIFIED AFFILIATE.—Section 132(h)(6)(A) is amended—

(1) by inserting "or is an entity at least 80 percent of which is owned directly or indirectly by one or more corporations which operate an airline," after "airline," in clause (i), and

(2) by inserting "or by a direct or indirect owner of such entity" after "member" in clause (ii).

(b) CONFORMING AMENDMENT.—Section 132(h)(6)(B) is amended by inserting "or other entity" after "corporation".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

Subtitle E—Tax-Exempt Bond Provisions

SEC. 7501. INCREASE IN SIZE OF LOANS PERMITTED UNDER CERTAIN BOND-FINANCED PROGRAMS.

(a) IN GENERAL.—Paragraph (2) of section 1316(a) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new sentence:

"A loan shall not be treated as failing to meet the requirements of subparagraph (B) by reason of exceeding the maximum amount permitted under such subparagraph if the maximum amount of such loan does not exceed $40,000."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

SEC. 7502. TREATMENT OF CERTAIN PORT AUTHORITY BONDS.

(a) IN GENERAL.—In the case of bonds described in subsection (b)—

(1) the simultaneous reduction of interest rates on such bonds shall not affect the tax-exempt status of the interest on such bonds, and

(2) such bonds shall not be treated as arbitrage bonds under section 148 of the Internal Revenue Code of 1986 by reason of the failure to reduce interest rates on loans made with the proceeds of such bonds before the date of such simultaneous reduction.

(b) BONDS DESCRIBED.—The bonds described in this subsection are bonds issued—

(1) by or on behalf of a port authority created on August 17, 1932,

(2) pursuant to a resolution adopted on February 14, 1974, that established a common bond security fund program, and

(3) after September 3, 1980, and before May 30, 1991.

SEC. 7503. MODIFICATION OF LIMITATION ON CAPITAL EXPENDITURES FOR SMALL ISSUE BONDS.

(a) MODIFICATION TO $10,000,000 LIMITATION.—Subparagraph (C) of section 144(a)(4) (relating to $10,000,000 limit in certain cases) is amended by striking "or" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", or", and by inserting after clause (iv) the following new clause:

"(v) not to exceed $10,000,000 (determined without regard to the preceding clauses of this subparagraph) during the 3-year period ending after the date of such issue, but only to the extent such expenditures are not financed with any tax-exempt bond."

(b) EFFECTIVE DATES.—The amendment made by subsection (a) shall apply to expenditures made after the date of the enactment of this Act.

SEC. 7504. APPLICATION OF 1988 TECHNICAL CORRECTION.

At the election of an issuer made in writing to the Secretary of the Treasury, the amendment made by section 1009(b)(1)(B) of the Technical and Miscellaneous Revenue Act of 1988 shall not apply to bonds issued as bank eligible pursuant to section 902(f)(3)(L) of the Tax Reform Act of 1986 before March 31, 1988.

Subtitle F—Other Income Tax Provisions

SEC. 7601. PROVISIONS RELATED TO S CORPORATIONS.

(a) S CORPORATIONS PERMITTED TO HAVE 50 SHAREHOLDERS.—Subparagraph (A) of section 1361(b)(1) (defining small business cor-

poration) is amended by striking "35 shareholders" and inserting "50 shareholders".

(b) S CORPORATIONS ELIGIBLE FOR RULES APPLICABLE TO REAL PROPERTY SUBDIVIDED FOR SALE BY NONCORPORATE TAXPAYERS.—

(1) IN GENERAL.—Subsection (a) of section 1237 (relating to real property subdivided for sale) is amended by striking "other than a corporation" in the material preceding paragraph (1) and inserting "other than a C corporation".

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 1237(a)(2) is amended by inserting "an S corporation which included the taxpayer as a shareholder," after "controlled by the taxpayer,".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 7602. TREATMENT OF LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) DEFERRAL OF INCOME INCLUSION.—Subsection (e) of section 451 (relating to special rules for proceeds from livestock sold on account of drought) is amended—

(1) by striking "drought conditions, and that these drought conditions" in paragraph (1) and inserting "drought or other weather-related conditions, and that such conditions", and

(2) by inserting "OR OTHER WEATHER-RELATED CONDITIONS" after "DROUGHT" in the subsection heading.

(b) INVOLUNTARY CONVERSIONS.—Subsection (e) of section 1033 (relating to livestock sold on account of drought) is amended—

(1) by inserting "or other weather-related conditions" before the period at the end thereof, and

(2) by inserting "OR OTHER WEATHER-RELATED CONDITIONS" after "DROUGHT" in the subsection heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and exchanges after December 31, 1992.

SEC. 7603. DEPRECIATION PERIOD FOR TUXEDOS HELD FOR RENTAL.

(a) IN GENERAL.—Subparagraph (A) of section 168(e)(3) (relating to classification of property) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end thereof the following new clause:

"(iii) any tuxedo held for rental."

(b) 2-YEAR CLASS LIFE.—The table contained in section 168(g)(3)(B) is amended by inserting above the item relating to subparagraph (B)(ii) the following new item:

"(A)(iii) .... 2".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 1992.

SEC. 7604. DEDUCTION BY PERSONAL SERVICE CORPORATION OF CERTAIN ACCRUED YEAR-END COMPENSATION PAYABLE TO EMPLOYEE-OWNERS.

(a) IN GENERAL.—Section 267 (relating to losses, expenses, and interest with respect to transactions between related taxpayers) is amended by adding at the end thereof the following new subsection:

"(h) YEAR-END REGULAR COMPENSATION PAID TO EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATION.—

"(1) In general.—In the case of a designated personal service corporation, the last sentence of subsection (a)(2) shall not apply to qualified compensation to be paid by such corporation to any employee who is not a key employee (as defined in section 416(i)).

"(2) Qualified compensation.—For purposes of paragraph (1), the term 'qualified compensation' means compensation payable to an employee for the payroll period ending at the close of such corporation's taxable year if—

"(A) such payroll period is a semi-monthly or shorter period,

"(B) such employee is regularly paid on the basis of semi-monthly or shorter payroll periods, and

"(C) such compensation is solely for hours of service performed or is such payroll period's ratable share of such employee's annual basic rate of compensation.

"(3) Designated personal service corporation.—For purposes of paragraph (1), the term 'designated personal service corporation' means any personal service corporation (within the meaning of section 441(i)(2)) using an accrual method of accounting for its last taxable year ending before the date of the enactment of this subsection."

(b) Effective Date.—The amendment made by this section shall apply to amounts incurred in taxable years beginning after December 31, 1992.

SEC. 7605. TREATMENT OF PARTNERSHIP INVESTMENT EXPENSES UNDER MINIMUM TAX.

(a) General Rule.—Subparagraph (A) of section 56(b)(1) (relating to limitation on deductions) is amended to read as follows:

"(A) Disallowance of certain deductions.—

"(i) In general.—No deduction shall be allowed—

"(I) for any miscellaneous itemized deduction (as defined in section 67(b)), or

"(II) for any taxes described in paragraph (1), (2), or (3) of section 164(a).

"(ii) Treatment of partnership investment expenses.—Subclause (I) of clause (i) shall not apply to the taxpayer's distributive share of the expenses described in section 212 of any partnership; except that the aggregate amount allowed as a deduction by reason of this sentence shall not exceed the lesser of (I) the aggregate adjusted investment income of the taxpayer from partnerships, or (II) the excess of the aggregate of the taxpayer's distributive shares of such expenses over 2 percent of adjusted gross income. For purposes of the preceding sentence, the term 'adjusted investment income' means investment income (as defined in section 163(d)(4)(B)) reduced by investment interest (as defined in section 163(d)(3)).

"(iii) Treatment of certain taxes.—Subclause (II) of clause (i) shall not apply to any amount allowable in computing adjusted gross income."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

SEC. 7606. CLARIFICATION OF TREATMENT OF CERTAIN BUILDINGS UNDER REHABILITATION CREDIT.

A building shall not be treated as being ineligible for the rehabilitation credit by reason of being relocated if the rehabilitation of such building at the relocated site began before the date of the publication of proposed Treasury Regulation 1.48-12(b)(5).

SEC. 7607. MINIMUM TAX TREATMENT OF CERTAIN PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) ADJUSTED CURRENT EARNINGS PREFERENCE.—

(1) IN GENERAL.—Clause (i) of section 56(g)(4)(B) (relating to inclusion of items included for purposes of computing earnings and profits) is amended by adding at the end thereof the following new sentence: "In the case of any insurance company taxable under section 831(b), this clause shall not apply to any amount not described in section 834(b)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1989.

(b) ADJUSTMENTS FOR BOOK INCOME.—In applying section 56(f) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) to any insurance company taxable under section 831(b) of such Code, only net investment income as reported in the company's applicable financial statement shall be taken into account in determining the adjusted net book income of such insurance company. The preceding sentence shall apply to taxable years beginning after December 31, 1986, and before January 1, 1990.

SEC. 7608. TAX TREATMENT OF ASSOCIATIONS RESULTING FROM MERGERS OF CERTAIN FARM CREDIT ASSOCIATIONS.

(a) IN GENERAL.—Part IV of subchapter F of chapter 1 (relating to farmers' cooperatives) is amended by adding after section 521 the following new section:

"SEC. 522. CERTAIN MERGED FARM CREDIT ASSOCIATIONS.

"(a) IN GENERAL.—For purposes of this title, except as otherwise provided in this section, an applicable merged association shall be treated in the same manner as a production credit association is treated under section 2.6 of the Farm Credit Act of 1971 (12 U.S.C. 2077).

"(b) TREATMENT OF EXEMPT ITEMS.—

"(1) IN GENERAL.—For purposes of this title, an exempt item shall not be taken into account in computing the tax liability of any applicable merged association.

"(2) EXEMPT ITEM.—For purposes of this subsection, the term 'exempt item' means any item of income, gain, loss, or deduction which is properly allocable to loans described in section 1.7 of the Farm Credit Act of 1971 (12 U.S.C. 2015) which have an initial term of at least 10 years.

"(c) DEFINITIONS.—For purposes of this section—

"(1) APPLICABLE MERGED ASSOCIATION.—The term 'applicable merged association' means any association resulting from a merger under section 7.8 of the Farm Credit Act of 1971 or sec-

tion 410(e) or 411 of the Agricultural Credit Act of 1987 of 1 or more production credit associations and 1 or more Federal land bank associations. Such term includes any corporation resulting from a subsequent merger of an association referred to in the preceding sentence with another corporation.

"(2) REFERENCES TO FARM CREDIT ACT OF 1971.—Any reference in this section to the Farm Credit Act of 1971 shall be a reference to such section as in effect on December 31, 1992."

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for part IV of subchapter F of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 522. Certain merged farm credit associations."

*(2)(A) The part heading for such part IV is amended by adding at the end thereof the following: "; **CERTAIN FARM CREDIT ASSOCIATIONS**".*

(B) The item relating to part IV in the table of parts for subchapter F of chapter 1 is amended by inserting "; certain farm credit associations" after "cooperatives".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 7609. RESTORATION OF PRIOR LAW TREATMENT OF CORPORATE REORGANIZATIONS THROUGH EXCHANGE OF DEBT INSTRUMENTS.

(a) IN GENERAL.—Subsection (a) of section 1275 (relating to original issue discount special rules) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) SPECIAL RULE FOR DETERMINATION OF ISSUE PRICE IN CASE OF EXCHANGE OF DEBT INSTRUMENTS IN REORGANIZATIONS.—

"(A) IN GENERAL.—If—

"(i) any debt instrument is issued pursuant to a plan of reorganization (within the meaning of section 368(a)(1)) for another debt instrument (hereinafter in this paragraph referred to as the 'old debt instrument'), and

"(ii) the amount which (but for this paragraph) would be the issue price of the debt instrument so issued is less than the adjusted issue price of the old debt instrument,

then the issue price of the debt instrument so issued shall be treated as equal to the lesser of the stated principal amount of the debt instrument so issued or the adjusted issue price of the old debt instrument.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) DEBT INSTRUMENT.—The term 'debt instrument' includes an investment unit.

"(ii) ADJUSTED ISSUE PRICE.—

"(I) IN GENERAL.—The adjusted issue price of the old debt instrument is its issue price, increased by the portion of any original issue discount previously includible in the gross income of any holder

(without regard to subsection (a)(7) or (b)(4) of section 1272 (or corresponding provisions of prior law)).

"(II) SPECIAL RULE FOR APPLYING SECTION 163(e).—For purposes of section 163(e), the adjusted issue price of the old debt instrument is its issue price, increased by any original issue discount previously allowed as a deduction."

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 108(e)(11) (relating to issue price) is amended by striking "1273 and 1274" and inserting "1273, 1274, and 1275".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act, in satisfaction of any indebtedness.

SEC. 7610. TREATMENT OF DEPOSITS UNDER CERTAIN PERPETUAL INSURANCE POLICIES.

(a) GENERAL RULE.—Section 7872 (relating to treatment of loans with below-market interest rates) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) TREATMENT OF DEPOSITS UNDER CERTAIN PERPETUAL INSURANCE POLICIES.—

"(1) IN GENERAL.—This section shall not apply to any deposit made by a policyholder under a qualified perpetual policy.

"(2) QUALIFIED PERPETUAL POLICY.—For purposes of paragraph (1), the term 'qualified perpetual policy' means any insurance policy—

"(A) which provides insurance for property damage or casualty with respect to qualified residential property (or the contents thereof), and

"(B) which is funded only by the policyholder placing with the insurance company a cash deposit (and does not provide for any periodic premiums) and such deposit is fully refundable (except for a penalty for early withdrawal) upon cancellation of the policy.

For purposes of the preceding sentence, the term 'qualified residential property' means any personal residence and any building used for residential purposes with 10 or fewer dwelling units."

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 7872(c) is amended by striking "subsection (g)" and inserting "subsections (g) and (h)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 7611. TAX TREATMENT OF CERTAIN DISTRIBUTIONS MADE BY ALASKA NATIVE CORPORATIONS.

(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986, any qualified distribution made by a Native Corporation shall be treated as a distribution not made out of earnings and profits.

(b) QUALIFIED DISTRIBUTION.—For purposes of this section—

(1) In general.—Except as otherwise provided in this subsection, the term 'qualified distribution' means any distribution to a Native (as defined in section 3 of the Alaska Native Claims Settlement Act) or descendant of a Native (as so defined)—

(A) which is made after the date of the enactment of the Alaska Native Claims Settlement Act, and

(B) which but for this section would have been treated as a dividend under chapter 1 of such Code.

(2) Limitation.—The aggregate amount of distributions made by any Native Corporation which may be treated as qualified distributions shall not exceed the lesser of—

(A) the aggregate amount received in cash by such Corporation on or before July 9, 1992, from the sale of any depletable property received by such Corporation pursuant to the Alaska Native Claims Settlement Act, or

(B) the aggregate bases (as determined pursuant to section 21(c) of such Act) of depletable property received by such Corporation pursuant to such Act and sold on or before July 9, 1992, reduced by the aggregate bases of any depletable property sold in a sale referred to in subsection (c)(2)(B).

(c) Adjustments to Amount Realized.—For purposes of subsection (b)(2)(A)—

(1) there shall be taken into account any amount of cash received by the Corporation indirectly through another corporation all the stock of which is owned directly by such Corporation, but

(2) the following amounts shall be disregarded:

(A) Any amount realized directly or indirectly by the Corporation for the use of losses or credits of such Corporation or of a corporation all of the stock of which is owned directly by such Corporation where such use would not have been allowable without regard to section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section 1804(e)(4) of the Tax Reform Act of 1986, and repealed by section 5021 of the Technical and Miscellaneous Revenue Act of 1988).

(B) Any amount realized directly or indirectly by the Corporation from a special purpose sale of any depletable property where the loss incurred on such sale was used in a manner which would not have been allowable, but for such section 60(b)(5) and such Corporation realized directly or indirectly any consideration for such use.

(d) Special Purpose Sale.—For purposes of subsection (c), the term "special purpose sale" means a sale in which a loss was recognized, and which was made under an agreement which was entered into either (1) after October 22, 1986, and on or before April 26, 1988, or (2) after April 26, 1988, if the loss incurred thereon was used in a contract referred to in section 5021(b) of the Technical and Miscellaneous Revenue Act of 1988.

(e) Native Corporation.—For purposes of this section, the term "Native Corporation" has the meaning given such term by section 3 of the Alaska Native Claims Settlement Act.

(f) DEPLETABLE PROPERTY.—For purposes of this section, the term "depletable property" means any property of a character subject to the allowance for depletion under section 611 of the Internal Revenue Code of 1986.

SEC. 7612. DEDUCTION FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 832(c) is amended by striking "and" at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting "; and", and by adding at the end thereof the following new paragraph:

"(14) the small insurance company deduction allowed under subsection (h)."

(b) SMALL INSURANCE COMPANY DEDUCTION DEFINED.—Section 832 is amended by adding at the end thereof the following new subsections:

"(h) SMALL INSURANCE COMPANY DEDUCTION.—

"(1) IN GENERAL.—The small insurance company deduction allowed under this subsection for any taxable year is the applicable deduction percentage of so much of the tentative taxable income for such taxable year as does not exceed $3,000,000.

"(2) PHASEOUT BETWEEN $3,000,000 AND $15,000,000.—The amount of the small insurance company deduction determined under paragraph (1) for any taxable year shall be reduced (but not below zero) by the applicable phaseout percentage of so much of the tentative taxable income for such taxable year as exceeds $3,000,000.

"(3) PERCENTAGES.—For purposes of this subsection—

In the case of taxable years beginning in calendar year:	The applicable deduction percentage is:	The applicable phaseout percentage is:
1992	0	0
1993	0	0
1994	3	0.75
1995	7	1.75
1996	9	2.25
1997 and thereafter	15	3.75

"(4) SMALL INSURANCE COMPANY DEDUCTION NOT ALLOWABLE TO COMPANY WITH ASSETS OF $500,000,000 OR MORE.—

"(A) IN GENERAL.—The small insurance company deduction shall not be allowed for any taxable year to any insurance company which, at the close of such taxable year, has assets equal to or greater than $500,000,000.

"(B) ASSETS.—For purposes of this paragraph, the term 'assets' means all assets of the company.

"(C) VALUATION OF ASSETS.—For purposes of this paragraph, the amount attributable to—

"(i) real property and stock shall be the fair market value thereof, and

"(ii) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition.

"(D) SPECIAL RULE FOR INTERESTS IN PARTNERSHIPS AND TRUSTS.—For purposes of this paragraph—

"(i) an interest in a partnership or trust shall not be treated as an asset of the company, but

"(ii) the company shall be treated as actually owning its proportionate share of the assets held by the partnership or trust (as the case may be).

"(i) TENTATIVE TAXABLE INCOME.—For purposes of subsection (h)—

"(1) IN GENERAL.—The term 'tentative taxable income' means taxable income determined without regard to the small insurance company deduction.

"(2) EXCLUSION OF ITEMS ATTRIBUTABLE TO NONINSURANCE BUSINESSES.—The amount of the tentative taxable income for any taxable year shall be determined without regard to all items attributable to noninsurance businesses.

"(3) NONINSURANCE BUSINESSES.—

"(A) IN GENERAL.—The term 'noninsurance business' means any activity which is not an insurance business.

"(B) CERTAIN ACTIVITIES TREATED AS INSURANCE BUSINESSES.—For purposes of subparagraph (A), any activity which is not an insurance business shall be treated as an insurance business if—

"(i) it is of a type traditionally carried on by insurance companies for investment purposes, but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business, or

"(ii) it involves the performance of administrative services in connection with plans providing property or casualty insurance benefits.

"(j) SPECIAL RULE FOR CONTROLLED GROUPS.—

"(1) SMALL INSURANCE COMPANY DEDUCTION DETERMINED ON CONTROLLED GROUP BASIS.—For purposes of subsections (h) and (i)—

"(A) all insurance companies which are members of the same controlled group shall be treated as 1 insurance company, and

"(B) any small insurance company deduction determined with respect to such group shall be allocated among the insurance companies which are members of such group in proportion to their respective tentative taxable incomes.

"(2) NONINSURANCE MEMBERS INCLUDED FOR ASSET TEST.—For purposes of subsection (h)(4), all members of the same controlled group (whether or not insurance companies) shall be treated as 1 company.

"(3) CONTROLLED GROUP.—For purposes of this subsection, the term 'controlled group' means any controlled group of corporations (as defined in section 1563(a)).

"(4) ADJUSTMENTS TO PREVENT EXCESS DETRIMENT OR BENEFIT.—Under regulations prescribed by the Secretary, proper ad-

justments shall be made in the application of this subsection to prevent any excess detriment or benefit (whether from year-to-year or otherwise) arising from the application of this subsection."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 7613. TREATMENT OF NOT-FOR-PROFIT RESIDUAL MARKET INSURANCE COMPANIES.

(a) IN GENERAL.—Subsection (d) of section 56 (relating to alternative tax net operating loss deduction) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR NOT-FOR-PROFIT RESIDUAL MARKET INSURANCE COMPANIES.—Subparagraph (A)(i) of paragraph (1) shall be applied by substituting '100 percent' for '90 percent' with respect to any insurance company which is created by a State or an instrumentality thereof and which is operated on a not-for-profit basis for the primary purpose of providing coverage to individuals or businesses for high-risk needs where coverage is not otherwise available or affordable."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 7614. GAINS AND LOSSES FROM CERTAIN DISPOSITIONS BY FARMERS COOPERATIVES.

(a) IN GENERAL.—Section 1388 is amended by adding at the end thereof the following new subsection:

"(k) TREATMENT OF GAINS OR LOSSES ON THE DISPOSITION OF CERTAIN ASSETS.—For purposes of this title, in the case of any farmer cooperative—

"(1) IN GENERAL.—A farmer cooperative may elect to include gain or loss from the sale or other disposition of any asset (including stock or any other ownership or financial interest in another entity) in net earnings of the organization from business done with or for patrons, if such asset was used by the organization to facilitate the conduct of business done with or for patrons.

"(2) ALLOCATION.—An election under paragraph (1) shall not apply to gain or loss on the sale or other disposition of any asset to the extent that such asset was used for purposes other than to facilitate the conduct of business done with or for patrons. For purposes of this paragraph, the extent of such use may be determined on the basis of any reasonable method for making allocations of income or expense between patronage and nonpatronage operations.

"(3) PERIOD OF ELECTION.—An election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the organization. Any such revocation shall be effective for taxable years beginning after the date on which notice of the revocation is filed with the Secretary.

"(4) ELECTION AFTER REVOCATION.—If an organization has made an election under paragraph (1) and such election has been revoked under paragraph (3), such organization shall not

be eligible to make an election under paragraph (1) for any taxable year before its 3rd taxable year which begins after the 1st taxable year for which such revocation is effective, unless the Secretary consents to such election.

"(5) COORDINATION WITH SECTION 1231.—If an organization has made an election under paragraph (1), section 1231 shall be applied separately with respect to both patronage-sourced gains and losses and nonpatronage-sourced gains and losses.

"(6) FARMER COOPERATIVE.—For purposes of this subsection, the term 'farmer cooperative' means any farmers', fruit growers', or like association to which subpart I of this subchapter applies.

"(7) NO INFERENCE.—Nothing in this subsection shall be construed to infer that a change in the law is intended for farmer cooperatives not having in effect an election under paragraph (1) or other organizations. Any gain or loss from the sale or other disposition of any asset by such organization shall be treated as if this subsection had not been enacted."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales or other dispositions in taxable years beginning after date of enactment.

SEC. 7615. SPECIAL RULE FOR INCLUSION OF CROP PROCEEDS OF CERTAIN DISASTER VICTIMS.

(a) IN GENERAL.—If, for the taxpayer's taxable year which includes the designation date described in subsection (b), the taxpayer has income derived from the sale or exchange of crops grown in a qualified disaster area, the taxpayer may elect to include such income for the taxable year following the taxable year in which such sale or exchange occurs.

(b) QUALIFIED DISASTER AREA.—For purposes of subsection (a), the term "qualified disaster area" means an area designated by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Andrew, Hurricane Iniki, or Typhoon Omar.

(c) LIMITATION.—Subsection (a) shall apply only to a taxpayer whose principal trade or business is farming (within the meaning of section 6420(c)(3)) of the Internal Revenue Code of 1986.

(d) SPECIAL RULES FOR SELF-EMPLOYMENT TAX.—If, for any taxable year, a taxpayer includes in gross income any amounts which, but for subsection (a), would have been included in gross income for the preceding taxable year, then the applicable contribution base for purposes of section 1402(b) of such Code for the taxable year of inclusion shall be increased by the lesser of—

(1) the applicable contribution base for the preceding taxable year, reduced by the self-employment income of the taxpayer for the preceding taxable year, or

(2) the amounts so included in gross income for the taxable year of inclusion.

(e) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years ending after December 31, 1991.

SEC. 7616. REPORTING OF REAL ESTATE TRANSACTIONS.

(a) IN GENERAL.—Paragraph (3) of section 6045(e) (relating to prohibition of separate charge for filing return) is amended by adding at the end the following new sentence: "Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to real estate transactions closing after the date of enactment of this Act.

SEC. 7617. STANDING FOR CERTAIN TAXPAYERS WITH REGARD TO SALE OF NET OPERATING LOSSES.

(a) Subsection (c) of section 5021 of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647) is amended to read as follows:

"(c) SPECIAL ADMINISTRATIVE RULES.—

"(1) INCOME INCLUDED IN NATIVE CORPORATION RETURN.—At the joint election of a Native Corporation and a corporation (referred to in this subsection (c) as the 'buyer corporation') with which the Native Corporation entered into a transaction permitted under section 60(b)(5) of the Tax Reform Act of 1984 and section 1804(e)(4) of the Tax Reform Act of 1986 (referred to in this subsection (c) as a 'Native Corporation transaction'), income assigned, transferred or otherwise made available by the buyer corporation through the use of a corporation (referred to in this subsection (c) as the 'profit subsidiary') by reason of such transaction for a period in which the profit subsidiary qualified as a member of the affiliated group of which the Native Corporation was the common parent shall be included in the taxable income of the Native Corporation affiliated group solely for purposes of section 6212 of the Internal Revenue Code—

"(A) ELECTION.—The election under this subsection (c) for the taxable year to which the election relates shall be made no later than 120 days after the date of enactment of this amendment. The election shall be irrevocable and shall be made by filing with the district director for the Anchorage district office of the Internal Revenue Service a written statement signed by responsible officers of the Native Corporation and the electing buyer corporation that—

"(i) identifies the Native Corporation, the profit subsidiary, and the buyer corporation (and their taxpayer identification numbers) and states their agreement to make the election provided in this subsection (c);

"(ii) states the amount of income assigned, transferred or otherwise made available to the profit subsidiary for the taxable year by reason of the Native Corporation transaction;

"(iii) if profit subsidiaries related to a buyer corporation other than the electing buyer corporation were

members of the affilicted group of which the Native Corporation was the common parent, describes the order and the amount of the losses and credits of the Native Corporation affiliated group that were used to offset the income of each profit subsidiary;

"(iv) states the agreement of the buyer corporation to consent under section 6501(c)(4) of the Internal Revenue Code to extend the periods of limitations for assessment and collection solely with respect to the income of the profit subsidiary for the affected taxable period(s) to a date not less than 180 days after the date the tax liability for the taxable year in which the Native Corporation transaction occurred is finally determined; and

"(v) the Native Corporation and the buyer corporation agree that the Service is authorized to make any refund of any overpayment that is determined to be due, jointly to the Native Corporation and the electing buyer corporation.

If a Native Corporation has engaged in multiple Native Corporation transactions, such election shall be independently made by each buyer corporation on separate written statements. A buyer corporation that elects under this provision must so elect for all Native Corporation transactions with the particular Native Corporation with whom the election is made for which the statute of limitations for assessment is open.

"(B) TAXABLE RATE.—Notwithstanding section 11 of the International Revenue Code, any income of the profit subsidiary that is subject to the election provided in this subsection (c) shall be taxed at the rate that such income would have been taxed if it had been included in the return of the buyer corporation for the taxable year from which such income was assigned, transferred or otherwise made available. Solely for purposes of issuing a notice under section 6212 of the Internal Revenue Code to a Native Corporation for a Native Corporation transaction for which an election has been made under this subsection (c), the tax may be computed by applying the maximum corporate rate under section 11 of the Internal Revenue Code.

"(2) TREATMENT OF NATIVE CORPORATION AS COMMON PARENT AS SOLE AGENT.—The common parent of an affiliated group which includes a Native Corporation that elects under subsection (c)(1) shall be the sole agent for the profit subsidiary for purposes of the Native Corporation transaction for the period of affiliation.

"(3) COLLECTION OF TAX FROM BUYER CORPORATION.—For purposes of this subsection, the amount of any tax, interest, addition to tax, penalty or other amount attributable to the income of the profit subsidiary shall be paid by and be collectible from the profit subsidiary and the buyer corporation for the taxable year for which income was assigned, transferred or otherwise made available by the buyer corporation in connection with the Native Corporation transaction.

"(4) PAYMENT OF TAX BY NATIVE CORPORATION.—If, after the election provided in subsection (c)(1) is made, the Native Corporation pays all or any part of the tax, interest, addition to tax, penalty or other amount attributable to the income of the profit subsidiary, such payment shall be deemed to be a payment by the buyer corporation for the taxable year for which such income would otherwise have been included in the buyer corporation's return if the election provided in subsection (c)(1) was not made—

"(A) FILING OF REFUND CLAIM.—A Native Corporation that elects under subsection (c)(1) shall be treated as the taxpayer for purposes of sections 6402 and 6511 of the Internal Revenue Code with respect to all payments of tax, interest, additions to tax, penalties, or other amounts attrbutable to the income of the profit subsidiary and shall be entitled to file a claim for refund as the taxpayer with respect to any taxes, interest, additions to tax, penalties or other amounts attributable to the income of the profit subsidiary.

"(B) FILING OF REFUND SUIT.—A Native Corporation that elects under subsection (c)(1) shall be treated as the taxpayer for purposes of section 7422 of the Internal Revenue Code with respect to all payments of tax, interest, additions to tax, penalties, or other amounts attributable to the income of the profit subsidiary, and as the plaintiff for purposes of section 1402 of title 28, United States Code, and shall be entitled to file and maintain a proceeding in court as the taxpayer for the recovery of such amounts.

"(C) REFUND OF OVERPAYMENT.—In the event that an overpayment is determined to be due, whether by final administrative or judicial decision, with respect to a Native Corporation transaction for which an election is made under subsection (c)(1), the Native Corporation shall be treated as the person who made the overpayment within the meaning of section 6402(a) of the Internal Revenue Code. Notwithstanding any law or rule of law, including the preceding sentence, any refund of such overpayment may be made jointly to the Native Corporation and to the electing buyer corporation, as agreed to under paragraph (A)(v) of subsection (c)(1).

"(5) PARTICIPATORY RIGHTS OF ELECTING BUYER CORPORATION.—Any buyer corporation that makes an election under subsection (c)(1) shall have the right to—

"(A) submit a written statement and participate with the Native Corporation in any administrative proceeding relating to any proposed adjustment regarding a Native Corporation transaction for which an election has been made; and

"(B) file an amicus brief in any proceeding in a Federal court or the United States Tax Court that has been filed by the Native Corporation involving a proposed adjustment regarding such a Native Corporation transaction.

All written notices or other reports issued by the Secretary or his delegate with respect to such a Native Corporation transaction shall be issued to the Native Corporation, and it shall be

the obligation of the Native Corporation to provide copies thereof to the electing buyer corporation. Rules similar to the rules of subparagraphs (B) and (C) of paragraph (7) shall apply for purposes of this paragraph.

"(6) FINAL DETERMINATION OF ISSUES.—

"(A) All issues with respect to the Native Corporation transaction with respect to which an election is made under subsection (c)(1), including the applicability of any interest, addition to tax, penalty or other amount, shall be determined by administrative or judicial decision with respect to the consolidated return of the Native Corporation affiliated group.

"(B) Upon such determination, any income of the profit subsidiary that is not offset in the Native Corporation transaction shall be reported on the buyer corporation's return as if it were originally reported thereon and subject to all adjustments, including net operating loss or other carrybacks, to which such income would otherwise be subject.

"(7) NO EFFECT ON NONELECTING CORPORATIONS.—The absence of an election by a Native Corporation and a buyer corporation with respect to a Native Corporation transaction shall not restrict the authority of the Secretary of the Treasury or his delegate to settle or litigate with any nonelecting buyer corporation with respect to any issue relating to such a transaction—

"(A) RIGHTS OF NATIVE CORPORATION.—For any such Native Corporation transaction for which no election is made under subsection (c)(1), the Native Corporation shall have the right to submit a written statement and participate with the buyer corporation in any administrative proceeding relating to any proposed adjustment regarding such Native Corporation transaction; and to file an amicus brief in any proceeding in a Federal court or the United States Tax Court that has been filed by the non-electing buyer corporation involving a proposed adjustment regarding such Native Corporation transaction.

"(B) EXTENSION OF STATUTE OF LIMITATIONS.—Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitations is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

"(C) FAILURES.—For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provisions of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any nonelecting buyer corporation.

"(8) EFFECTIVE DATE.—This provision shall be effective for all taxable years for which the statute of limitations for assessment with respect to an electing Native Corporation has not expired prior to the date of enactment of this Act—

"(A) EXTENSION OF STATUTE OF LIMITATIONS.—Any Native Corporation for which the statute of limitations for

assessment will expire within 120 days after the date of enactment of this section shall have the right upon request to extend such statute of limitations pursuant to section 6501(c)(4) of the Internal Revenue Code to a date not less than 120 days after the date of enactment of this section.

"(B) PERIOD FOR ASSESSMENTS.—If the statute of limitations for assessments with respect to an electing Native Corporation has not expired prior to the date of the enactment of this Act, such period shall not expire before the date 120 days after the date on which the Native Corporations makes the election under this subsection."

(b) Section 5021 of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647) is amended by adding, after subsection (e), new subsection (f) to read as follows:

"(f) INCREASE IN UNDERPAYMENT RATE.—For purposes of determining the amount of interest payable under section 6601 of the Internal Revenue Code on a tax underpayment attributable to a Native Corporation transaction for which an election has been made under subsection (c) hereof, the underpayment rate otherwise applicable under section 6621(a)(2) or (c) of the Internal Revenue Code of 1986 shall be increased by 0.5 percentage points.".

SEC. 7618. RESEARCH CREDIT BASE AMOUNT FOR START-UP COMPANIES.

(a) IN GENERAL.—Clause (i) of section 41(c)(3)(B) (relating to the research credit definition of start-up companies) is amended to read as follows:

"(i) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The fixed-base percentage shall be determined under this subparagraph if the first taxable year in which a taxpayer had both gross receipts and qualified research expenses begins after December 31, 1983."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after September 30, 1992.

SEC. 7619. APPLICATION OF PASSIVE LOSS LIMITATIONS TO TIMBER ACTIVITIES.

(a) IN GENERAL.—Treasury regulations sections 1.469–5T(b)(2)(ii) and (iii) shall not apply to any closely held timber activity if the nature of such activity is such that the aggregate hours devoted to management of the activity for any year is generally less than 100 hours.

(b) DEFINITIONS.—For purposes of subsection (a)—

(1) CLOSELY HELD ACTIVITY.—An activity shall be treated as closely held if at least 80 percent of the ownership interests in the activity is held—

(A) by 5 or fewer individuals, or

(B) by individuals who are members of the same family (within the meaning of section 2032A(e)(2) of the Internal Revenue Code of 1986).

An interest in a limited partnership shall in no event be treated as a closely held activity for purposes of this section.

(2) TIMBER ACTIVITY.—The term "timber activity" means the planting, cultivating, caring, cutting, or preparation (other than milling) for market, of trees.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

Subtitle G—Provisions Relating to Taxes Other Than Income Taxes

SEC. 7701. TAX-FREE SALES OF TRUCKS ASSEMBLED BY EDUCATIONAL ORGANIZATIONS.

(a) IN GENERAL.—Section 4053 (relating to exemptions) is amended by adding at the end thereof the following new paragraph:

"(8) TRUCKS ASSEMBLED BY NONPROFIT EDUCATIONAL ORGANIZATIONS.—Any article described in section 4051(a) which is, or is part of, an automobile truck, truck trailer, or semitrailer which is assembled by students, and sold, as part of a program included in the regular curriculum of a nonprofit educational organization, but only if the proceeds from such sale are to be used solely for the purpose of defraying costs incurred in connection with such program."

(b) ALLOWANCE OF CREDIT OR REFUND.—Section 6416(b) (relating to special cases in which tax payments considered overpayments) is amended by inserting after paragraph (6) the following new paragraph:

"(7) TRUCK CHASSIS, BODIES, AND SEMITRAILERS SOLD BY CERTAIN NONPROFIT EDUCATIONAL ORGANIZATIONS.—If—

"(A) a nonprofit educational organization has sold an automobile truck, truck trailer, or semitrailer assembled by students as part of a program included in the regular curriculum of such organization and the proceeds from such sale are to be used solely for the purpose of defraying costs incurred in connection with such program, and

"(B) the tax imposed by section 4051 has been paid with respect to such sale,

such tax shall be deemed to be an overpayment by such organization."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 1992.

SEC. 7702. CLARIFICATION OF EXEMPTION FROM FIREARMS TAX FOR RELOADING OF SHELLS AND CARTRIDGES SUPPLIED BY CUSTOMER.

(a) IN GENERAL.—Section 4182 (relating to exemptions from firearms tax) is amended by adding at the end thereof the following new subsection:

"(d) RELOADING OF CUSTOMER-SUPPLIED SHELLS AND CARTRIDGES.—No tax shall be imposed by section 4181 on the reloading of previously used shells and cartridges supplied by a customer if the reloaded shells and cartridges returned to the customer—

"(1) are previously used shells and cartridges supplied by such customer or any other customer, and

"(2) are identical in type and quantity to the shells and cartridges supplied by such customer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 7703. EXPLOSIVES HANDLING EQUIPMENT EXEMPT FROM HEAVY TRUCK TAX.

(a) IN GENERAL.—Section 4053 (relating to exemptions) is amended by adding at the end the following new paragraph:

"(8) EXPLOSIVES HANDLING EQUIPMENT.—Any article primarily designed—

"(A) to be placed or mounted on an automobile truck chassis, truck trailer, or semi-trailer chassis, and

"(B) to be used to process, prepare, or load explosive products or the components thereof."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 512(b) of the Surface Transportation Assistance Act of 1982.

SEC. 7704. TERMINATION OF CERTAIN SPECIAL ESTATE TAX VALUATION RECAPTURE PROVISIONS.

Effective on and after January 1, 1993, the amendments made by subsection (c) of section 421 of the Economic Recovery Tax Act of 1981 shall also apply with respect to the estates of decedents dying before January 1, 1982.

SEC. 7705. CLARIFICATION OF EMPLOYMENT TAX STATUS OF CERTAIN FISHERMEN.

(a) AMENDMENTS OF INTERNAL REVENUE CODE OF 1986.—

(1) DETERMINATION OF SIZE OF CREW.—Subsection (b) of section 3121 (defining employment) is amended by adding at the end thereof the following new sentence:

"For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals."

(2) CERTAIN CASH REMUNERATION PERMITTED.—Subparagraph (A) of section 3121(b)(20) is amended to read as follows:

"(A) such individual does not receive any cash remuneration other than as provided in subparagraph (B) and other than cash remuneration—

"(i) which does not exceed $100 per trip;

"(ii) which is contingent on a minimum catch; and

"(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,".

(3) CONFORMING AMENDMENT.—Section 6050A(a) is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting "; and", and by adding at the end thereof the following new paragraph:

"(5) any cash remuneration described in section 3121(b)(20)(A)."

(b) AMENDMENT OF SOCIAL SECURITY ACT.—

(1) DETERMINATION OF SIZE OF CREW.—Subsection (a) of section 210 of the Social Security Act is amended by adding at the end thereof the following new sentence:

"For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals."

(2) CERTAIN CASH REMUNERATION PERMITTED.—Subparagraph (A) of section 210(a)(20) of such Act is amended to read as follows:

"(A) such individual does not receive any additional compensation other than as provided in subparagraph (B) and other than cash remuneration—

"(i) which does not exceed $100 per trip;

"(ii) which is contingent on a minimum catch; and

"(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to remuneration paid after December 31, 1992.

(2) SPECIAL RULE.—The amendments made by this section (other than subsection (a)(3)) shall also apply to remuneration paid after December 31, 1984, and before January 1, 1993, unless the payor treated such remuneration (when paid) as being subject to tax under chapter 21 of the Internal Revenue Code of 1986.

SEC. 7706. SERVICES PERFORMED BY FULL-TIME STUDENTS FOR SEASONAL CHILDREN'S CAMPS EXEMPT FROM SOCIAL SECURITY TAXES.

(a) IN GENERAL.—Subsection (b) of section 3121 (defining employment) is amended by striking "or" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting "; or", and by adding at the end thereof the following new paragraph:

"(21) service performed by a full time student (as defined in section 3306(q)) in the employ of an organized children's camp—

"(A) if such camp—

"(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

"(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year, and

"(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year."

(b) CONFORMING AMENDMENT.—Subsection (a) of section 210 of the Social Security Act is amended by striking "or" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting "; or", and by adding at the end thereof the following new paragraph:

"(21) Service performed by a full time student (as defined in section 3306(q) of the Internal Revenue Code of 1986) in the employ of an organized children's camp—

"(A) if such camp—

"(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

"(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than

33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year, and

"(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration paid on or after October 1, 1993.

Subtitle H—Tax Treatment of Certain Cargo Containers

SEC. 7801. TREATMENT OF CERTAIN CARGO CONTAINERS.

(a) GENERAL RULE.—A qualified intermodal cargo container shall be treated as property described in section 48(a)(2)(B)(v) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

(b) QUALIFIED INTERMODAL CARGO CONTAINER.—

(1) GENERAL RULE.—For purposes of this section, the term "qualified intermodal cargo container" means any intermodal cargo container of a United States person which, after being placed in service, at all times during the taxable year either—

(A) is subject to a qualifying lease, or

(B) is being—

(i) held for lease,

(ii) moved for purposes of leasing or being available for lease, or

(iii) maintained or repaired for subsequent lease,

by the taxpayer, a lessee or agent of the taxpayer or any other person.

(2) DEFINITIONS.—For purposes of this subsection—

(A) QUALIFYING LEASE.—The term "qualifying lease" means—

(i) any lease to a container user that has one or more trade routes that contact the United States, or

(ii) any short-term lease to a container user.

(B) CONTAINER USER.—The term "container user" means—

(i) a person that is in the business of using intermodal cargo containers to ship or transport cargo for other persons, or

(ii) with respect to an intermodal cargo container, a person that uses the container to ship or transport its own cargo.

(C) U.S. TRADE ROUTES.—A container user shall be deemed to have one or more trade routes that contact the United States if at any time during the taxable year such person—

(i) owns, operates, or charters any vessel that receives or delivers any intermodal cargo container in the United States, or

(ii) uses any intermodal cargo container to ship cargo to or from the United States.

(D) Short-term lease.—The term "short-term lease" means—

(i) any lease the stated term of which is not more than 50 percent of the class life (within the meaning of section 168(i)(1) of the Internal Revenue Code of 1986) of the container, and

(ii) any lease under a lease agreement under which the lessee is not required to use or hold the container for a specified term.

(E) Lease.—The term "lease" means lease or sublease.

SEC. 7802. NO INFERENCE.

No inference shall be drawn from this subtitle as to the application of section 48(a)(2)(B)(v) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) or section 168(g)(4)(E) of the Internal Revenue Code of 1986 to containers that are not qualified intermodal cargo containers or to containers placed in service after December 31, 1989.

SEC. 7803. REVOCATION OF PRIOR ELECTION.

(a) General Rule.—Any election made under Internal Revenue Service Revenue Procedure 90–10 prior to the date of enactment of this Act may be revoked without the consent of the Secretary of the Treasury or his delegate. An election revoked under this section shall be treated as never having been made.

(b) Time and Manner of Revocation.—Any revocation under subsection (a) shall be made within 180 days after the date of enactment of this Act by filing with the Secretary of the Treasury or his delegate—

(1) a statement describing the election being revoked and indicating that the election is revoked, and

(2) an amended return consistent with such revocation.

(c) Waiver of Statute of Limitations.—Sections 6511 and 6514 of the Internal Revenue Code of 1986 shall not bar a refund or credit attributable to a revocation made in accordance with subsection (b).

SEC. 7804. EFFECTIVE DATE.

(a) General Rule.—Section 7801 shall apply to all intermodal cargo containers placed in service before January 1, 1990.

(b) Revocation of Election.—Section 7803 shall take effect on the date of the enactment of this Act.

Subtitle I—PBGC Report on Employers With Underfunded Plans

SEC. 7901. REPORT ON EMPLOYERS WITH UNDERFUNDED PLANS.

(a) General Rule.—The Pension Benefit Guaranty Corporation shall, on January 31 of each calendar year after 1991, submit a report to the Congress setting forth—

(1) the name of each contributing sponsor of 1 or more applicable plans having unfunded liabilities aggregating $25,000,000 or more, and

(2) the name of each contributing sponsor with an applicable plan which has an unfunded liability in excess of $5,000,000 and with respect to which a minimum funding waiver in excess of $1,000,000 has been granted.

Information may be included in such report only if such information may be publicly disclosed by the Pension Benefit Guaranty Corporation.

(b) DETERMINATIONS OF UNFUNDED LIABILITY.—For purposes of subsection (a), determinations of the unfunded liability of any plan shall be made by the Pension Benefit Guaranty Corporation on the basis of the most recent information available to it.

(c) APPLICABLE PLAN.—For purposes of subsection (a), the term "applicable plan" means any employee pension benefit plan (as defined in paragraph (2) of section 3 of the Employee Retirement Income Security Act of 1974) covered under subtitle B of title IV of such Act; except that such term shall not include a multiemployer plan (as defined in section 4001(a)(3) of such Act).

(d) CONTRIBUTING SPONSOR.—For purposes of this section, the term "contributing sponsor" has the meaning given to such term by section 4001(a)(13) of such Act.

Subtitle J—Studies and Reports

PART I—STUDIES

SEC. 7911. STUDY OF SEMI-CONDUCTOR MANUFACTURING EQUIPMENT.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of semi-conductor manufacturing equipment to determine the appropriate recovery period and class life under section 168 of the Internal Revenue Code of 1986 for such equipment.

(b) REPORT.—The report of such study shall be submitted before April 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 7912. MUNICIPAL BOND FUND STUDY.

The Congressional Budget Office shall conduct a study of municipal bond funds currently operating in the United States and shall report its findings to the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, the Budget Committees of the Senate and House of Representatives no later than December 31, 1992. The study shall (1) indicate the types of local capital projects supported by municipal bond funds, (2) the Federal, State, and local budgetary impacts of municipal bond funds, and (3) the need, if any, of additional bonding authority for municipal bond funds under the 1986 Tax Act.

SEC. 7913. STUDY OF TRAVEL EXPENSES OF LOGGERS.

(a) STUDY.—The Secretary of the Treasury shall conduct a study with respect to the deductibility of the travel expenses of an individual who is in the trade or business of cutting and skidding timber. Such study shall include an analysis of the facts and circumstances under which such individual may deduct for Federal income tax

purposes expenses incurred when traveling between the individual's home and the job site.

(b) REPORT.—The Secretary of the Treasury shall, not later than July 1, 1993, report the results of the study conducted under subsection (a), including a recommendation as to whether or not travel expenses described in subsection (a) should be allowed as a deduction for Federal income tax purposes.

PART II—AMERICAN CITIZENS ANNUAL REPORT

SEC. 7918. AMERICAN CITIZENS ANNUAL REPORT ACT.

(a) FINDINGS AND PURPOSES.—

(1) FINDINGS.—The Congress makes the following findings:

(A) Publicly owned corporations provide shareholders with an annual report on the financial status of the corporation.

(B) Americans are entitled to an annual report on the financial status of the Federal Government, as all citizens share an interest in the financial well-being of our Federal Government. Accurate, consistent, and broadly distributed reporting on the Nation's finances are central to the conduct of democracy.

(C) Recent Federal budget deficits have resulted in more than a tripling of the Federal debt. With prospects for enormous Federal budget deficits for the next several years, the debt is a burden that affects the present and future generations of Americans.

(D) The actual financial performance of the Federal Government often differs from the budget by tens, even hundreds, of billions of dollars. For example, the fiscal year 1991 budget was to result in a deficit of $63,000,000,000. Instead, the actual deficit for the year was $268,700,000,000.

(E) The Chief Financial Officers Act is leading agencies to develop reliable and relevant financial information that is to be useful to the public, including audited financial statements.

(F) The Federal Government continues to lose billions of dollars each year through fraud, waste, abuse, and mismanagement. Standardized reporting to the public is essential to the improvement of accountability of public programs.

(G) The growing Federal debt is hindering economic growth and competitiveness, and ultimately, reduces the standard of living of all Americans.

(2) PURPOSES.—The purposes of this section are to—

(A) provide the American taxpayer with an annual report on the financial status of the Federal Government;

(B) increase the participation and awareness of the public in finding solutions to the Federal Government's budget problems;

(C) require the President, Congressional leaders, and the chief financial officers of the Government to report to

the public on the well-being of the Federal Government's finances as a part of their fiduciary responsibilities; and

(D) bring a public focus to efforts already underway that seek to develop and improve financial standards, annual reporting, and systems in the agencies of the Federal Government.

(b) ANNUAL REPORT.—Section 3513 of title 31, United States Code, is amended by adding at the end thereof the following:

"(d)(1) The Secretary of the Treasury shall prepare an annual report (referred to in this subsection as the 'annual report') containing—

"(A) the most recent 5-year actual trends in Federal receipts, expenditures, fund balances, assets and liabilities, and debts by major category or source, along with a brief description of those trends for the most recent year;

"(B) a comparison of the actual Federal spending and revenues by major category or source for the most recent fiscal year—

"(i) to the budget request estimates as submitted by the President for that year; and

"(ii) to the enacted budget,

along with notes explaining differences;

"(C) statements from the President, the Majority Leader of the Senate, and the Speaker of the House of Representatives regarding significant aspects of the Government's financial performance; and

"(D) any other relevant information on the Government's performance and contributions to economic growth, productivity, and investment in infrastructure recommended for inclusion by the advisory committee and deemed appropriate by the Director of the Office of Management and Budget.

"(2)(A) Preparation and content of the annual report shall be supervised and directed by the Director of the Office of Management and Budget.

"(B) There is established an advisory committee to provide the Director of the Office of Management and Budget with comments and suggestions on the design and content of the annual report. The advisory committee shall consist of 9 members as follows:

"(i) 3 members to be appointed by the President.

"(ii) 2 members to be appointed by the Majority Leader of the Senate.

"(iii) 1 member to be appointed by the Minority Leader of the Senate.

"(iv) 2 members to be appointed by the Speaker of the House of Representatives.

"(v) 1 member to be appointed by the Minority Leader of the House of Representatives.

"(3) The annual report shall contain a statement of assurance by the Director of the Office of Management and Budget and an audit opinion the Comptroller General attesting to the reliability and relevancy accuracy of the information contained in the annual report.

"(4) The annual report shall be prepared annually in a timely fashion after the close of each fiscal year. If the final annual report

for a fiscal year is not available within 3 calendar months after the close of that fiscal year, a preliminary annual report shall be prepared and published within that period containing substantially all the material described in subparagraphs (A) and (B) of paragraph (1) and the final annual report shall be prepared and published as soon as possible thereafter.

"(5)(A) In the case of any booklet of instructions for Form 1040, 1040A, or 1040EZ prepared by the Secretary for filing individual income tax returns for taxable years beginning in any calendar year, the Secretary shall include on the front inside cover of such booklet of instructions (in addition to the information required in subsection (a) of section 7523 of the Internal Revenue Code of 1986)—

"(i) a summary of the annual report prepared by the Director, and

"(ii) the procedures for obtaining a copy of such annual report.

"(B) The summary referred to in subparagraph (A) shall—

"(i) include the cumulative Federal debt at the end of each of the 10 preceding fiscal years expressed in total dollars and in dollars per capita; and

"(ii) be presented in a manner that is easily comprehensible to a taxpayer.

"(6) Notwithstanding any other provision of law, the Secretary of the Treasury may impose a processing fee or may accept contributions from corporations, foundations, and other private entities for distribution or preparation of the report, or both.".

(c) AUTHORIZATION.—For the purpose of carrying out the provisions of the amendment made by this Act, there are authorized to be appropriated to the Secretary of the Treasury and the Director of the Office of Management and Budget $10,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal years 1994, 1995, 1996 and 1997. These amounts shall include any funds raised through the authority established in section 3513(d)(7) of title 31, United States Code, as added by this Act.

Subtitle K—Mount Rushmore Commemorative Coin Act Amendments

SEC. 7921. MOUNT RUSHMORE COMMEMORATIVE COIN ACT.

(a) DISTRIBUTION OF SURCHARGES.—Section 8 of the Mount Rushmore Commemorative Coin Act (104 Stat. 314; 31 U.S.C. 5112 note) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) the first $18,750,000 shall be paid during fiscal year 1993 by the Secretary to the Society to assist the Society's efforts to improve, enlarge, and renovate the Mount Rushmore National Memorial; and

"(2) the remainder shall be returned to the Federal Treasury for purposes of reducing the national debt.".

(b) RETROACTIVE EFFECT.—If, prior to the enactment of this Act, any amount of surcharges have been received by the Secretary of the Treasury and paid into the United States Treasury pursuant

to section 8(1) of the Mount Rushmore Commemorative Coin Act, as in effect prior to the enactment of this Act, that amount shall be paid out of the Treasury to the extent necessary to comply with section 8(1) of the Mount Rushmore Commemorative Coin Act, as in effect after the enactment of this Act. Amounts paid pursuant to the preceding sentence shall be out of funds not otherwise appropriated.

Subtitle L—Annuity Benefits for Certain Ex-Spouses of Central Intelligence Agency Employees

SEC. 7931. SURVIVOR ANNUITY FOR CERTAIN EX-SPOUSES OF CIA EMPLOYEES.

(a) SURVIVOR ANNUITY.—

(1) ENTITLEMENT OF FORMER WIFE OR HUSBAND.—Any person who was divorced on or before December 4, 1991, from a participant or retired participant in the Central Intelligence Agency Retirement and Disability System (CIARDS) and who was married to such participant for not less than 10 years during such participant's creditable service, at least five years of which were spent by the participant during the participant's service as an employee of the Central Intelligence Agency outside the United States, or otherwise in a position the duties of which qualified the participant for designation by the Director of Central Intelligence as a participant under section 203 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note), shall be entitled, except to the extent such person is disqualified under subsection (b), to a survivor annuity equal to 55 percent of the greater of—

(A) the unreduced amount of the participant's annuity, as computed under section 221(a) of such Act; or

(B) the unreduced amount of what such annuity as so computed would be if the participant had not elected payment of the lump-sum credit under section 294 of such Act.

(2) REDUCTION IN SURVIVOR ANNUITY.—A survivor annuity payable under this section shall be reduced by an amount equal to any survivor annuity payments made to the former wife or husband under section 226 of such Act.

(b) LIMITATIONS.—A former wife or husband is not entitled to a survivor annuity under this section if—

(1) the former wife or husband remarries before age 55, except that the entitlement of the former wife or husband to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce;

(2) the former wife or husband is less than 50 years of age; or

(3) the former wife or husband meets the definition of "former spouse" that was in effect under section 204(b)(4) of such Act before December 4, 1991.

(c) COMMENCEMENT AND TERMINATION OF ANNUITY.—

(1) COMMENCEMENT OF ANNUITY.—The entitlement of a former wife or husband to a survivor annuity under this section shall commence—

(A) in the case of a former wife or husband of a participant or retired participant who is deceased as of October 1, 1993, beginning on the later of—

(i) the 60th day after such date; or

(ii) the date on which the former wife or husband reaches age 50; and

(B) in the case of any other former wife or husband, beginning on the latest of—

(i) the date on which the participant or retired participant to whom the former wife or husband was married dies;

(ii) the 60th day after October 1, 1993; or

(iii) the date on which the former wife or husband attains age 50.

(2) TERMINATION OF ANNUITY.—The entitlement of a former wife or husband to a survivor annuity under this section terminates on the last day of the month before the former wife's or husband's death or remarriage before attaining age 55. The entitlement of a former wife or husband to such a survivor annuity shall be restored on the date such remarriage is dissolved by death, annulment, or divorce.

(d) ELECTION OF BENEFITS.—A former wife or husband of a participant or retired participant shall not become entitled under this section to a survivor annuity or to the restoration of the survivor annuity unless the former wife or husband elects to receive it instead of any other survivor annuity to which the former wife or husband may be entitled under CIARDS or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(e) APPLICATION.—

(1) TIME LIMIT; WAIVER.—A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require. Any such application shall be submitted not later than October 1, 1994. The Director may waive the application deadline under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(2) RETROACTIVE BENEFITS.—Upon approval of an application provided under paragraph (1), the appropriate survivor annuity shall be payable to the former wife or husband with respect to all periods before such approval during which the former wife or husband was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before October 1, 1993.

(f) RESTORATION OF ANNUITY.—Notwithstanding subsection (e)(1), the deadline by which an application for a survivor annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such a survivor annuity is restored after October 1, 1993, under subsection (b)(1) or (c)(2).

(g) APPLICABILITY IN CASES OF PARTICIPANTS TRANSFERRED TO FERS.—

(1) ENTITLEMENT.—Except as provided in paragraph (2), this section shall apply to a former wife or husband of a CIARDS participant who has elected to become subject to chapter 84 of title 5, United States Code.

(2) AMOUNT OF ANNUITY.—The survivor annuity of a person covered by paragraph (1) shall be equal to 50 percent of the unreduced amount of the participant's annuity computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986 and shall be reduced by an amount equal to any survivor annuity payments made to the former wife or husband under section 8445 of title 5, United States Code.

SEC. 7932. RETIREMENT ANNUITY FOR CERTAIN EX-SPOUSES OF CIA EMPLOYEES.

(a) RETIREMENT ANNUITY.—

(1) ENTITLEMENT OF FORMER WIFE OR HUSBAND.—A person described in section 7931(a)(1) shall be entitled, except to the extent such former spouse is disqualified under subsection (b), to an annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant throughout such creditable service, equal to that former wife's or husband's pro rata share of 50 percent of such annuity (determined in accordance with section 222(a)(1)(B) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees).

(2) REDUCTION IN RETIREMENT ANNUITIES.—

(A) AMOUNT OF REDUCTION.—An annuity payable under this section shall be reduced by an amount equal to any apportionment payments payable to the former wife or husband pursuant to the terms of a court order incident to the dissolution of the marriage of such former spouse and the participant, former participant, or retired participant.

(B) DEFINITION OF TERMS.—For purposes of subparagraph (A):

(i) APPORTIONMENT.—The term "apportionment" means a portion of a retired participant's annuity payable to a former wife or husband either by the retired participant or the Government in accordance with the terms of a court order.

(ii) COURT ORDER.—The term "court order" means any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(b) LIMITATIONS.—A former wife or husband is not entitled to an annuity under this section if—

(1) the former wife or husband remarries before age 55, except that the entitlement of the former wife or husband to an

annuity under this section shall be restored on the date such remarriage is dissolved by death, annulment, or divorce;

(2) the former wife or husband is less than 50 years of age; or

(3) the former wife or husband meets the definition of "former spouse" that was in effect under section 204(b)(4) of such Act before December 4, 1991.

(c) COMMENCEMENT AND TERMINATION.—

(1) RETIREMENT ANNUITIES.—The entitlement of a former wife or husband to an annuity under this section—

(A) shall commence on the later of—

(i) October 1, 1993;

(ii) the day the participant upon whose service the right to the annuity is based becomes entitled to an annuity under such Act; or

(iii) such former wife's or husband's 50th birthday; and

(B) shall terminate on the earlier of—

(i) the last day of the month before the former wife or husband dies or remarries before 55 years of age, except that the entitlement of the former wife or husband to an annuity under this section shall be restored on the date such remarriage is dissolved by death, annulment, or divorce; or

(ii) the date on which the annuity of the participant terminates.

(2) DISABILITY ANNUITIES.—Notwithstanding paragraph (1)(A)(ii), in the case of a former wife or husband of a disability annuitant—

(A) the annuity of the former wife or husband shall commence on the date on which the participant would qualify on the basis of the participant's creditable service for an annuity under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (other than a disability annuity) or the date the disability annuity begins, whichever is later; and

(B) the amount of the annuity of the former wife or husband shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(3) ELECTION OF BENEFITS.—A former wife or husband of a participant or retired participant shall not become entitled under this section to an annuity or to the restoration of an annuity unless the former wife or husband elects to receive it instead of any other annuity to which the former wife or husband may be entitled under CIARDS or any other retirement system for Government employees on the basis of a marriage to someone other than the participant.

(4) APPLICATION.—

(A) TIME LIMIT; WAIVER.—An annuity under this section shall not be payable unless appropriate written application is provided to the Director of Central Intelligence, complete with any supporting documentation which the Director may by regulation require, not later than October 1, 1994. The Director may waive the application deadline

under the preceding sentence in any case in which the Director determines that the circumstances warrant such a waiver.

(B) RETROACTIVE BENEFITS.—Upon approval of an application under subparagraph (A), the appropriate annuity shall be payable to the former wife or husband with respect to all periods before such approval during which the former wife or husband was entitled to an annuity under this section, but in no event shall an annuity be payable under this section with respect to any period before October 1, 1993.

(d) RESTORATION OF ANNUITIES.—Notwithstanding subsection (c)(4)(A), the deadline by which an application for a retirement annuity must be submitted shall not apply in cases in which a former spouse's entitlement to such annuity is restored after October 1, 1993, under subsection (b)(1) or (c)(1)(B).

(e) APPLICABILITY IN CASES OF PARTICIPANTS TRANSFERRED TO FERS.—The provisions of this section shall apply to a former wife or husband of a CIARDS participant who has elected to become subject to chapter 84 of title 5, United States Code. For purposes of this subsection, any reference in this section to a participant's CIARDS annuity shall be deemed to refer to the transferred participant's annuity computed in accordance with section 302(a) of the Federal Employees' Retirement System Act of 1986.

(f) SAVINGS PROVISION.—Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under title II or III of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

SEC. 7933. HEALTH BENEFITS.

(a) IN GENERAL.—Section 16 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403p) is amended—

(1) by redesignating subsections (c) through (e) as subsections (d) through (f), respectively;

(2) by inserting after subsection (b) the following new subsection (c):

"(c) ELIGIBILITY OF FORMER WIVES OR HUSBANDS.—(1) Notwithstanding subsections (a) and (b) and except as provided in subsection (d), an individual—

"(A) who was divorced on or before December 4, 1991, from a participant or retired participant in the Central Intelligence Agency Retirement and Disability System or the Federal Employees Retirement System Special Category;

"(B) who was married to such participant for not less than ten years during the participant's creditable service, at least five years of which were spent by the participant during the participant's service as an employee of the Agency outside the United States, or otherwise in a position the duties of which qualified the participant for designation by the Director of Central Intelligence as a participant under section 203 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

"(C) who was enrolled in a health benefits plan as a family member at any time during the 18-month period before the date of dissolution of the marriage to such participant;

is eligible for coverage under a health benefits plan.

"(2) A former spouse eligible for coverage under paragraph (1) may enroll in a health benefits plan in accordance with subsection (b)(1), except that the election for such enrollment must be submitted within 60 days after the date on which the Director notifies the former spouse of such individual's eligibility for health insurance coverage under this subsection.".

(b) CONFORMING AMENDMENT.—Subsection (a) of such section is amended by striking out "subsection (c)(1)" and inserting in lieu thereof "subsection (d)".

SEC. 7934. SOURCE OF PAYMENT FOR ANNUITIES.

Annuities provided under sections 7931 and 7932 shall be payable from the Central Intelligence Agency Retirement and Disability Fund established by section 202 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note).

SEC. 7935. EFFECTIVE DATE.

Sections 7931 through 7933 shall take effect as of October 1, 1993. No benefits provided pursuant to this subtitle shall be payable with respect to any period before that date.

Subtitle M—Repeal of Coast Guard Recreational Boat User Fee

SEC. 7941. RECREATIONAL BOAT TAX REPEAL.

(a) IN GENERAL.—

(1) SCOPE OF FEE.—Section 2110(b)(1) of title 46, United States Code, is amended—

(A) by striking "1991, 1992, 1993, 1994, and 1995", and inserting in lieu thereof "1993 and 1994"; and

(B) by striking "that is greater than 16 feet in length" and inserting in lieu thereof "to which paragraph (2) of this subsection applies".

(2) AMOUNT OF FEE.—Section 2110(b)(2) of title 46, United States Code, is amended to read as follows:

"(2) The fee or charge established under paragraph (1) of this subsection is as follows:

"(A) in fiscal year 1993—

"(i) for vessels of more than 21 feet in length but less than 27 feet, not more than $35;

"(ii) for vessels of at least 27 feet in length but less than 40 feet, not more than $50; and

"(iii) for vessels of at least 40 feet in length, not more than $100.

"(B) in fiscal year 1994—

"(i) for vessels of at least 37 feet in length but less than 40 feet, not more than $50; and

"(ii) for vessels of at least 40 feet in length, not more than $100.".

(b) EFFECTIVE DATE.—The amendments made by this section are effective October 1, 1992.

SEC. 7942. AUTOMATED TARIFF FILING AND INFORMATION SYSTEM.

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) COMMISSION.—The term "Commission" means the Federal Maritime Commission.

(2) COMMON CARRIER.—The term "common carrier" means a common carrier under section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702), a common carrier by water in interstate commerce under the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.), or a common carrier by water in intercoastal commerce under the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

(3) CONFERENCE.—The term "conference" has the meaning given that term under section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702).

(4) ESSENTIAL TERMS OF SERVICE CONTRACTS.—The term "essential terms of service contracts" means the essential terms that are required to be filed with the Commission and made available under section 8(c) of the Shipping Act of 1984 (46 App. U.S.C. 1707(c)).

(5) TARIFF.—The term "tariff" means a tariff of rates, charges, classifications, rules, and practices required to be filed by a common carrier or conference under section 8 of the Shipping Act of 1984 (46 App. U.S.C. 1707), or a rate, fare, charge, classification, rule, or regulation required to be filed by a common carrier or conference under the Shipping Act, 1916 (46 U.S.C. 801 et seq.), or the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

(b) TARIFF FORM AND AVAILABILITY.—

(1) REQUIREMENT TO FILE.—Notwithstanding any other law, each common carrier and conference shall, in accordance with subsection (c), file electronically with the Commission all tariffs, and all essential terms of service contracts, required to be filed by that common carrier or conference under the Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.), the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.), and the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

(2) AVAILABILITY OF INFORMATION.—The Commission shall make available electronically to any person, without time, quantity, or other limitation, both at the Commission headquarters and through appropriate access from remote terminals—

(A) all tariff information, and all essential terms of service contracts, filed in the Commission's Automated Tariff Filing and Information System database; and

(B) all tariff information in the System enhanced electronically by the Commission at any time.

(c) FILING SCHEDULE.—All tariffs and essential terms of service contracts shall be filed electronically not later than January 1, 1993.

(d) FEES.—

(1) AMOUNT OF FEE.—The Commission shall charge, during the period beginning January 1, 1993, and ending on September 30, 1995—

(A) a fee of 46 cents for each minute of remote computer access by any individual of the information available electronically under this section; and

(B)(i) for electronic copies of the Automated Tariff Filing and Information System database (in bulk), or any portion of the database, a fee reflecting the cost of providing those copies, including the cost of duplication, distribution, and user-dedicated equipment; and

(ii) for a person operating or maintaining information in a database that has multiple tariff or service contract information obtained directly or indirectly from the Commission, a fee of 46 cents for each minute that database is subsequently accessed by computer by any individual.

(2) EXEMPTION FOR FEDERAL AGENCIES.—A Federal agency is exempt from paying a fee under this subsection.

(e) ENFORCEMENT.—The Commission shall use systems controls or other appropriate methods to enforce subsection (d).

(f) PENALTIES.—

(1) CIVIL PENALTIES.—A person failing to pay a fee established under subsection (d) is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

(2) CRIMINAL PENALTIES.—A person that willfully fails to pay a fee established under subsection (d) commits a class A misdemeanor.

(g) AUTOMATIC FILING IMPLEMENTATION.—

(1) CERTIFICATION OF SOFTWARE.—Software that provides for the electronic filing of data in the Automated Tariff Filing and Information System shall be submitted to the Commission for certification. Not later than 14 days after a person submits software to the Commission for certification, the Commission shall—

(A) certify the software if it provides for the electronic filing of data; and

(B) publish in the Federal Register notice of that certification.

(2) REPAYABLE ADVANCE.—

(A) AVAILABILITY AND USE OF ADVANCE.—Upon the date of enactment of this Act, the Secretary of the Treasury shall make available to the Commission, as a repayable advance, not more than $4,000,000, to remain available until expended. The Commission shall spend these funds to complete and upgrade the capacity of the Automated Tariff Filing and Information System to provide access to information under this section.

(B) REQUIREMENT TO REPAY.—

(i) IN GENERAL.—Any advance made to the Commission under subparagraph (A) shall be repaid, with interest, to the general fund of the Treasury not later than September 30, 1995.

(ii) *INTEREST.—Interest on any advance made to the Commission under subparagraph (A)—*

(I) 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

(II) shall be compounded annually.

(3) USE OF RETAINED AMOUNTS.—Out of amounts collected by the Commission under this section, amounts shall be retained and expended by the Commission for each fiscal year, without fiscal year limitation, to carry out this section and pay back the Secretary of the Treasury for the advance made available under paragraph (2).

(4) DEPOSIT IN TREASURY.—Except for the amounts retained by the Commission under paragraph (3), fees collected under this section shall be deposited in the general fund of the Treasury as offsetting receipts.

(h) RESTRICTION.—No fee may be collected under this section after fiscal year 1995.

(i) CONFORMING AMENDMENT.—Section 2 of the Act of August 16, 1989 (46 App. *U.S.C. 1111c), is repealed.*

TITLE VIII—CUSTOMS AND TRADE PROVISIONS

Subtitle A—Trade Promotion

SEC. 8101. TREATMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS UNDER THE GENERALIZED SYSTEM OF PREFERENCES.

The table in section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) is amended by striking "Union of Soviet Socialist Republics".

SEC. 8102. CENTER FOR THE STUDY OF TRADE IN THE WESTERN HEMISPHERE.

(a) FINDINGS AND PURPOSES.—

(1) FINDINGS.—The Congress finds that—

(A) countries in the Western Hemisphere are currently considering more integrated and liberalized trade relations, including free trade agreements, free trade zones, restructured tariffs, debt relief, removal of foreign investment barriers, and other economic measures;

(B) the United States, Mexico, and Canada have recently negotiated a North American Free Trade Agreement;

(C) a freer trade environment may improve the economies of Mexico and Latin American and Caribbean countries and in turn remove incentives for illegal immigration into the United States;

(D) the congressionally appointed Commission for the Study of International Migration and Cooperative Economic Development has recommended that the United States promote economic growth in Mexico, South and Central America, Canada, and the Caribbean, because the Commission believes such growth will decrease illegal immigration into the United States from these regions;

(E) the European economic integration process, which will be completed by 1992, demonstrates the benefits that can be derived if countries trade with and interact economically with other countries in the same hemisphere;

(F) solid economic relationships between the United States and other Western Hemisphere countries involve complex issues which require continuing detailed study and discussion;

(G) the economic interdependency of Western Hemisphere countries requires that a center be established in the southern United States to promote better trade and economic relations among the nations of the Western Hemisphere; and

(H) such a center should be established in the State of Texas because that State is a primary bridge through which Latin America does business with the United States.

(2) PURPOSES.—The purposes of this section are to—

(A) establish a center devoted to studying and supporting better economic relations among Western Hemisphere countries;

(B) give the center responsibility for studying the short- and long-term implications of freer trade and more liberalized economic relations among countries from North and South America, and from the Caribbean Basin; and

(C) provide a forum where scholars and students from Western Hemisphere countries can meet, study, exchange views, and conduct activities to increase economic relations between their respective countries.

(b) ESTABLISHMENT OF THE CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE.—The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) is amended by inserting after section 218 the following new section:

"SEC. 219. CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE.

"(a) ESTABLISHMENT.—The Commissioner of Customs, after consultation with the Texas Higher Education Coordinating Board (hereafter in this section referred to as the 'Coordinating Board'), is authorized and directed to make grants to an institution of higher education (or a consortium of such institutions) to assist such institution in planning, establishing, and operating a Center for the Study of Western Hemispheric Trade (hereafter in this section referred to as the 'Center'). The Commissioner of Customs shall make the first grant not later than December 1, 1993, and the Center shall be established not later than February 1, 1994.

"(b) SCOPE OF THE CENTER.—The Center shall be a year-round program operated by an institution of higher education located in the State of Texas (or a consortium of such institutions), the purpose

of which is to promote and study trade between and among Western Hemisphere countries. The Center shall conduct activities designed to examine negotiation of free trade agreements, adjusting tariffs, reducing nontariff barriers, improving relations among customs officials, and promoting economic relations among countries in the Western Hemisphere.

"(c) CONSULTATION; SELECTION CRITERIA.—The Commissioner of Customs shall consult with the Coordinating Board and other appropriate public and private sector authorities with respect to selecting, planning, and establishing the Center. In selecting the appropriate institution of higher education, the Commissioner of Customs shall give consideration to—

"(1) the institution's ability to carry out the programs and activities described in this section; and

"(2) any resources the institution can provide the Center in addition to Federal funds provided under this program.

"(d) PROGRAMS AND ACTIVITIES.—The Center shall conduct the following activities:

"(1) Provide forums for international discussion and debate for representatives from countries in the Western Hemisphere regarding issues which affect trade and other economic relations within the hemisphere.

"(2) Conduct studies and research projects on subjects which affect Western Hemisphere trade, including tariffs, customs, regional and national economics, business development and finance, production and personnel management, manufacturing, agriculture, engineering, transportation, immigration, telecommunications, medicine, science, urban studies, border demographics, social anthropology, and population.

"(3) Publish materials, disseminate information, and conduct seminars and conferences to support and educate representatives from countries in the Western Hemisphere who seek to do business with or invest in other Western Hemisphere countries.

"(4) Provide grants, fellowships, endowed chairs, and financial assistance to outstanding scholars and authorities from Western Hemisphere countries.

"(5) Provide grants, fellowships, and other financial assistance to qualified graduate students, from Western Hemisphere countries, to study at the Center.

"(6) Implement academic exchange programs and other cooperative research and instructional agreements with the complementary North/South Center at the University of Miami at Coral Gables.

"(e) DEFINITIONS.—For purposes of this section—

"(1) WESTERN HEMISPHERE COUNTRIES.—The terms 'Western Hemisphere countries', 'countries in the Western Hemisphere', and 'Western Hemisphere' mean Canada, the United States, Mexico, countries located in South America, beneficiary countries (as defined by section 212), the Commonwealth of Puerto Rico, and the United States Virgin Islands.

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term by section 1201(a) of the Higher Education Act of 1965.

"(f) FEES FOR SEMINARS AND PUBLICATIONS.—Notwithstanding any other provision of law, a grant made under this section may provide that the Center may charge a reasonable fee for attendance at seminars and conferences and for copies of publications, studies, reports, and other documents the Center publishes. The Center may waive such fees in any case in which it determines imposing a fee would impose a financial hardship and the purposes of the Center would be served by granting such a waiver.

"(g) DURATION OF GRANT.—The Commissioner of Customs is directed to make grants to any institution or institutions selected as the Center for fiscal years 1994, 1995, 1996, and 1997.

"(h) REPORT.—The Commissioner of Customs shall, no later than February 1, 1994, and annually thereafter for years for which grants are made, submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. The first report shall include—

"(1) a statement identifying the institution or institutions selected as the Center,

"(2) the reasons for selecting the institution or institutions as the Center, and

"(3) the plan of such institution or institutions for operating the Center.

Each subsequent report shall include information with respect to the operations of the Center, the Center's collaboration with, and dissemination of information to, Government policymakers and the business community with respect to the Center's study of Western Hemispheric trade, and the plan and efforts of the Center to continue operations after grants under this section have expired.".

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 1994, and such sums as may be necessary in the 3 succeeding fiscal years to carry out the purposes of this section.

Subtitle B—Customs and Trade Agency Authorizations and Reports; Competitiveness Policy Council

PART I—AUTHORIZATIONS AND REPORTS

SEC. 8201. CUSTOMS AND TRADE AGENCY AUTHORIZATIONS.

(a) UNITED STATES INTERNATIONAL TRADE COMMISSION.—Section 330(e)(2) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended to read as follows:

"(2)(A) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) not to exceed the following:

"(i) $45,152,000 for fiscal year 1993.

"(ii) $48,042,000 for fiscal year 1994.

"(B) Not to exceed $2,500 of the amount authorized to be appropriated for any fiscal year under subparagraph (A) may be used,

subject to the approval of the Chairman of the Commission, for reception and entertainment expenses.

"(C) No part of any sum that is appropriated under the authority of subparagraph (A) may be used by the Commission in the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.".

(b) UNITED STATES CUSTOMS SERVICE.—Section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)) is amended to read as follows:

"(b) AUTHORIZATION OF APPROPRIATIONS.—

"(1) FOR NONCOMMERCIAL OPERATIONS.—There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in noncommercial operations not to exceed the following:

"(A) $536,582,000 for fiscal year 1993.

"(B) $558,045,000 for fiscal year 1994.

"(2) FOR COMMERCIAL OPERATIONS.—(A) There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in commercial operations not less than the following:

"(i) $795,000,000 for fiscal year 1993.

"(ii) $826,800,000 for fiscal year 1994.

"(B) The monies authorized to be appropriated under subparagraph (A) for any fiscal year, except for such sums as may be necessary for the salaries and expenses of the Customs Service that are incurred in connection with the processing of merchandise that is exempt from the fees imposed under section 13031(a) (9) and (10) of the Consolidated Omnibus Budget Reconciliation Act of 1985, shall be appropriated from the Customs User Fee Account.

"(3) FOR AIR AND MARINE INTERDICTION.—There are authorized to be appropriated for the operation (including salaries and expenses) and maintenance of the air and marine interdiction programs of the Customs Service not to exceed the following:

"(A) $138,983,000 for fiscal year 1993.

"(B) $144,000,000 for fiscal year 1994.".

(c) OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.—Section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)) is amended to read as follows:

"(g)(1)(A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions not to exceed the following:

"(i) $21,697,000 for fiscal year 1993.

"(ii) $22,435,000 for fiscal year 1994.

"(B) Of the amounts authorized to be appropriated under subparagraph (A) for any fiscal year—

"(i) not to exceed $98,000 may be used for entertainment and representation expenses of the Office; and

"(ii) not to exceed $2,500,000 shall remain available until expended.".

SEC. 8202. CUSTOMS FORFEITURE FUND.

Section 613A(f)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1613b(f)(2)(B)) is amended to read as follows:

"(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following shall be available to carry out the purposes set forth in subsection (a)(3):

"(i) $15,000,000 for fiscal year 1993.

"(ii) $15,450,000 for fiscal year 1994.".

SEC. 8203. REPEAL OF EAST-WEST TRADE STATISTICS MONITORING SYSTEM.

(a) REPEAL.—Section 410 of the Trade Act of 1974 (19 U.S.C. 2440) is repealed.

(b) CONFORMING AMENDMENT.—The table of contents for such Act of 1974 is amended by striking out the following:

"Sec. 410. East-West Trade Statistics Monitoring System.".

SEC. 8204. CUSTOMS PERSONNEL AIRPORT WORK SHIFT REGULATION.

Section 13031(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(g)) is amended—

(1) by striking out "In addition to the regulations required under paragraph (2), the" and inserting "The";

(2) by striking out paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

SEC. 8205. REPORTS ON CUSTOMS ISSUES.

(a) ATTRITION.—Not later than February 1, 1993, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the "Committees") on the causes for the high attrition rates experienced by the United States Customs Service in its Southwest region, with particular focus on border ports of entry. The report shall include recommendations to the Committees for reducing the high attrition rate.

(b) STAFFING.—Not later than February 1, 1993, the Secretary of the Treasury shall submit a report to the Committees describing the Secretary's plans for staffing at full capacity on a port-by-port basis each of the facilities that has been or will be expanded, built, modernized, or otherwise improved under the Southwest Border Capital Improvements Program.

(c) LOCATION OF OFFICES AND AGENTS.—Not later than the date which is 3 months after the date of the enactment of this Act, the Secretary of the Treasury shall submit to the Committees—

(1) a report analyzing the feasibility of moving the respective Customs Service offices—

(A) from downtown Portland, Oregon to the vicinity of the airport in Portland, Oregon, and

(B) from downtown Chicago, Illinois, to O'Hare International Airport; and

(2) a report analyzing the feasibility of placing drug enforcement agents in the Medford/Grants Pass area in Oregon.

PART II—COMPETITIVENESS POLICY COUNCIL

SEC. 8211. COMPETITIVENESS POLICY COUNCIL ACT AMENDMENTS.

(a) REAUTHORIZATION.—Section 5209 of the Competitiveness Policy Council Act (15 U.S.C. 4808) is amended—

(1) by striking "1991 and 1992" and inserting "1993 and 1994"; and

(2) by striking "$5,000,000" and inserting "$2,500,000".

(b) RENAMING OF COUNCIL.—The Competitiveness Policy Council Act (15 U.S.C. 4801 et seq.) is amended—

(1) in the subtitle heading—

*(A) by inserting "**National**" before "**Competitiveness**"; and*

*(B) by striking "**Council**" and inserting "**Commission**";*

(2) in section 5201—

(A) by inserting "National" before "Competitiveness"; and

(B) by striking "Council" and inserting "Commission";

(3) in section 5202(b)(2)—

(A) by inserting "National" before "Competitiveness"; and

(B) by striking "Council" and inserting "Commission";

(4) in section 5203—

(A) in the section caption, by striking "COUNCIL" and inserting "COMMISSION";

(B) by inserting "National" before "Competitiveness"; and

(C) by striking "Council" each place it appears and inserting "Commission";

(5) in section 5204—

(A) in the section caption, by striking "COUNCIL" and inserting "COMMISSION";

(B) by striking "Council" and inserting "Commission";

(6) in sections 5205 through 5208, by striking "Council" each place such term appears and inserting "Commission";

(7) in section 5207, in the section caption, by striking "COUNCIL" and inserting "COMMISSION"; and

(8) in section 5210—

(A) in paragraph (1)—

(i) by inserting "National" before "Competitiveness"; and

(ii) by striking "Council" each place it appears and inserting "Commission"; and

(B) in paragraph (2)—

(i) by inserting "National" before "Competitiveness"; and

(ii) by striking "Council" and inserting "Commission".

(c) DUTIES OF THE COMMISSION.—Section 5204 of the National Competitiveness Policy Commission Act (15 U.S.C. 4803) is amended by striking paragraphs (11) and (12) and inserting the following:

"(11) prepare, publish, and distribute reports that—

"(A) contain the analysis and recommendations of the Commission; and

"(B) comment on the overall competitiveness of the American economy, including the report described in section 5208; and

"(12) submit an annual report to the President and to the Congress on the activities of the Commission.".

(d) EXECUTIVE DIRECTOR AND STAFF.—Section 5206 of the National Competitiveness Policy Commission Act (15 U.S.C. 4805) is amended—

(1) in subsection (a)(1), by striking "GS-18 of the General Schedule" and inserting "the highest level allowed under section 5376 of title 5, United States Code";

(2) in subsection (b)—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (4); and

(C) by inserting before paragraph (4), as redesignated, the following:

"(1) FULL-TIME STAFF.—The Executive Director may appoint such officers and employees as may be necessary to carry out the functions of the Commission in accordance with the Federal civil service and classification laws, and fix compensation in accordance with the provisions of title 5, United States Code.

"(2) SENIOR EXECUTIVE SERVICE.—The Commission may establish positions in the Senior Executive Service in accordance with the provisions of subchapter II of chapter 31 of title 5, United States Code.

"(3) TEMPORARY STAFF.—The Executive Director may appoint such employees as may be necessary to carry out the functions of the Commission for a period of not more than 1 year, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, at rates not to exceed the maximum rate payable under section 5376 of title 5, United States Code."; and

(3) in subsection (c), by striking "GS-16 of the General Schedule" and insert "the maximum rate payable under section 5376 of title 5, United States Code.".

(e) POWERS OF THE COMMISSION.—Section 5207 of the National Competitiveness Policy Commission Act (15 U.S.C. 4806) is amended—

(1) by inserting before the period at the end of subsection (b)(1)(B) ", except that such information may be provided to members and staff of the Council subject to existing national security laws and regulations";

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

(3) by inserting after subsection (f) the following:

"(g) CONTRACTING AUTHORITY.—Within the limitation of appropriations to the Commission, the Commission may enter into contracts with State agencies, private firms, institutions, and individuals for the purpose of carrying out its duties under this subtitle.".

(f) REPORTING REQUIREMENTS.—Section 5208 of the National Competitiveness Policy Commission Act (15 U.S.C. 4807) is amended—

(1) by striking the caption and inserting the following:

"SEC. 5208. ANNUAL PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.";

(2) in subsection (a)—

(A) by striking the subsection heading and inserting "(a) PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.—"; and

(B) by striking "on" and inserting "not later than"; and

(3) by adding at the end the following:

"(d) PERIODIC REPORTS.—The Commission may submit to the President and the Congress such other reports containing analysis and recommendations as the Commission deems necessary.".

Subtitle C—Customs Modernization

SEC. 8301. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This subtitle may be cited as the "Customs Modernization and Informed Compliance Act".

(b) REFERENCE.—Whenever in part I, II, or III of this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a part, section, subsection, or other provision, the reference shall be considered to be made a part, section, subsection, or other provision of the Tariff Act of 1930 (19 U.S.C. 1202 et seq.).

PART I—IMPROVEMENTS IN CUSTOMS ENFORCEMENT

SEC. 8311. PENALTIES FOR VIOLATIONS OF ARRIVAL, REPORTING, ENTRY, AND CLEARANCE REQUIREMENTS.

Section 436 (19 U.S.C. 1436) is amended—

(1) by amending subsection (a)—

(A) by striking out "433" in paragraph (1) and inserting "431, 433, or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)",

(B) by amending paragraph (2) to read as follows:

"(2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper information, data or manifest to the Customs Service under section 431(e), 433(d), or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) without revealing the facts; or", and

(C) by amending paragraph (3) to read as follows:

"(3) to fail to make entry or to obtain clearance as required by section 434 or 644 of this Act, section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91), or section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1509); or"; and

(2) by striking out "AND ENTRY" in the section heading and inserting "ENTRY, AND CLEARANCE".

SEC. 8312. FAILURE TO DECLARE.

Section 497(a) (19 U.S.C. 1497(a)) is amended—

(1) by inserting "or transmitted" after "made" in paragraph (1)(A); and

(2) by amending paragraph (2)(A) to read as follows:

"(A) if the article is a controlled substance, either $500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and".

SEC. 8313. CUSTOMS TESTING LABORATORIES; DETENTION OF MERCHANDISE.

(a) AMENDMENT.—Section 499 (19 U.S.C. 1499) is amended to read as follows:

"SEC. 499. EXAMINATION OF MERCHANDISE.

"(a) ENTRY EXAMINATION.—

"(1) IN GENERAL.—Imported merchandise that is required by law or regulation to be inspected, examined, or appraised shall not be delivered from customs custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws, regulations, and instructions which the Secretary or the Customs Service is authorized to enforce) until the merchandise has been inspected, appraised, or examined and is reported by the Customs Service to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States.

"(2) EXAMINATION.—The Customs Service—

"(A) shall designate the packages or quantities of merchandise covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise;

"(B) shall order such packages or quantities to be sent to such place as is designated by the Secretary by regulation for such purpose;

"(C) may require such additional packages or quantities as the Secretary considers necessary for such purpose; and

"(D) shall inspect a sufficient number of shipments, and shall examine a sufficient number of entries, to ensure compliance with the laws enforced by the Customs Service.

"(3) UNSPECIFIED ARTICLES.—If any package contains any article not specified in the invoice or entry and, in the opinion of the Customs Service, the article was omitted from the invoice or entry—

"(A) with fraudulent intent on the part of the seller, shipper, owner, agent, importer of record, or entry filer, the contents of the entire package in which such article is found shall be subject to seizure; or

"(B) without fraudulent intent, the value of the article shall be added to the entry and the duties, fees, and taxes thereon paid accordingly.

"(4) DEFICIENCY.—If a deficiency is found in quantity, weight, or measure in the examination of any package, the

person finding the deficiency shall make a report thereof to the Customs Service. The Customs Service shall make allowance for the deficiency in the liquidation of duties.

"(5) INFORMATION REQUIRED FOR RELEASE.—If an examination is conducted, any information required for release shall be provided, either electronically or in paper form, to the Customs Service at the port of examination. The absence of such information does not limit the authority of the Customs Service to conduct an examination.

"(b) TESTING LABORATORIES.—

"(1) ACCREDITATION OF PRIVATE TESTING LABORATORIES.—The Customs Service shall establish and implement a procedure, under regulations promulgated by the Secretary, for accrediting private laboratories within the United States which may be used to perform tests (that would otherwise be performed by Customs Service laboratories) to establish the characteristics, quantities, or composition of imported merchandise. Such regulations—

"(A) shall establish the conditions required for the laboratories to receive and maintain accreditation for purposes of this subsection;

"(B) shall establish the conditions regarding the suspension and revocation of accreditation, which may include the imposition of a monetary penalty not to exceed $100,000 and such penalty is in addition to the recovery, from a gauger or laboratory accredited under paragraph (1), of any loss of revenue that may have occurred, but the Customs Service—

"(i) may seek to recover lost revenue only in cases where the gauger or laboratory intentionally falsified the analysis or gauging report in collusion with the importer; and

"(ii) shall neither assess penalties nor seek to recover lost revenue because of a good faith difference of professional opinion; and

"(C) may provide for the imposition of a reasonable charge for accreditation and periodic reaccreditation.

The collection of any charge for accreditation and reaccreditation under this section is not prohibited by section 13031(e)(6) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(6)).

"(2) APPEAL OF ADVERSE ACCREDITATION DECISIONS.—A laboratory applying for accreditation, or that is accredited, under this section may contest any decision or order of the Customs Service denying, suspending, or revoking accreditation, or imposing a monetary penalty, by commencing an action in accordance with chapter 169 of title 28, United States Code, in the Court of International Trade within 60 days after issuance of the decision or order.

"(3) TESTING BY ACCREDITED LABORATORIES.—When requested by an importer of record of merchandise, the Customs Service shall authorize the release to the importer of a representative sample of the merchandise for testing, at the expense of the importer, by a laboratory accredited under paragraph (1). The test-

ing results from a laboratory accredited under paragraph (1) that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing results obtained from a Customs Service laboratory, be accepted by the Customs Service if the importer of record certifies that the sample tested was taken from the merchandise in the entry. Nothing in this subsection shall be construed to limit in any way or preclude the authority of the Customs Service to test or analyze any sample or merchandise independently.

"(4) AVAILABILITY OF TESTING PROCEDURE, METHODOLOGIES, AND INFORMATION.—Testing procedures and methodologies used by the Customs Service, and information resulting from any testing conducted by the Customs Service, shall be made available as follows:

"(A) Testing procedures and methodologies shall be made available upon request to any person unless the procedures or methodologies are—

"(i) proprietary to the holder of a copyright or patent related to such procedures or methodologies, or

"(ii) developed by the Customs Service for enforcement purposes.

"(B) Information resulting from testing shall be made available upon request to the importer of record and any agent thereof unless the information—

"(i) is proprietary to the holder of a copyright or patent related to the procedures or methodologies; or

"(ii) reveals information developed by the Customs Service for enforcement purposes.

"(5) MISCELLANEOUS PROVISIONS.—For purposes of this subsection—

"(A) any reference to a private laboratory includes a reference to a private gauger; and

"(B) accreditation of private laboratories extends only to the performance of functions by such laboratories that are within the scope of those responsibilities for determinations of the elements relating to admissibility, quantity, composition, or characteristics of imported merchandise that are vested in, or delegated to, the Customs Service.

"(c) DETENTIONS.—Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:

"(1) IN GENERAL.—Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.

"(2) NOTICE OF DETENTION.—The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of—

"(A) the initiation of the detention;

"(B) the specific reason for the detention;

"(C) the anticipated length of the detention;

"(D) the nature of the tests or inquiries to be conducted; and

"(E) the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

"(3) TESTING RESULTS.—Upon request by the importer or other party having an interest in detained merchandise, the Customs Service shall provide the party with copies of the results of any testing conducted by the Customs Service on the merchandise and a description of the testing procedures and methodologies (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by the Customs Service for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

"(4) SEIZURE AND FORFEITURE.—If otherwise provided by law, detained merchandise may be seized and forfeited.

"(5) EFFECT OF FAILURE TO MAKE DETERMINATION.—

"(A) The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of section 514(a)(4).

"(B) For purposes of section 1581 of title 28, United States Code, a protest against the decision to exclude the merchandise which has not been allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day.

"(C) Notwithstanding section 2639 of title 28, United States Code, once an action respecting a detention is commenced, unless the Customs Service establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.".

(b) EXISTING LABORATORIES.—Accreditation under section 499(b) of the Tariff Act of 1930 (as added by subsection (a)) is not required for any private laboratory (including any gauger) that was accredited or approved by the Customs Service as of the day before the date of the enactment of this Act; but any such laboratory is subject to reaccreditation under the provisions of such section and the regulations promulgated thereunder.

SEC. 8314. RECORDKEEPING.

Section 508 (19 U.S.C. 1508) is amended—

(1) by amending subsection (a) to read as follows:

"(a) REQUIREMENTS.—Any—

"(1) owner, importer, consignee, importer of record, entry filer, or other party who—

"(A) imports, files a drawback claim, or transports or stores merchandise carried or held under bond, or

"(B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

"(2) agent of any party described in paragraph (1); or

"(3) person whose activities require the filing of a declaration or entry, or both;

shall make, keep, and render for examination and inspection such records (including, but not limited to, statements, declarations, documents and electronically generated or machine readable data) which—

"(A) pertain to any such activity, or to the information contained in the documents, records or electronically generated or machine readable data required by this Act in connection with such activity; and

"(B) are normally kept in the ordinary course of business."; and

(2) by amending subsection (c) to read as follows:

"(c) PERIOD OF TIME.—The records required by subsections (a) and (b) shall be kept for such period of time, not to exceed 5 years from the date of entry or exportation, as appropriate, as the Secretary shall prescribe; except that records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.".

SEC. 8315. EXAMINATION OF BOOKS AND WITNESSES.

Section 509 (19 U.S.C. 1509) is amended as follows:

(1) Subsection (a) is amended—

(A) by striking out "and taxes" wherever it appears and inserting ", fees and taxes";

(B) by inserting "or electronically generated or machine readable data," after "other document," in paragraph (1);

(C) by striking out the semicolon at the end of paragraph (1) and inserting ", except that—

"(A) if such record, statement, declaration, document, or electronically stored or transmitted information or data is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and

"(B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g);";

(D) by amending that part of paragraph (2) that precedes subparagraph (D) to read as follows:

"(2) summon, upon reasonable notice—

"(A) the person who—

"(i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

"(ii) exported merchandise, or knowingly caused merchandise to be exported, to Canada,

"(iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or

"(iv) filed a declaration, entry, or drawback claim with the Customs Service;

"(B) any officer, employee, or agent of any person described in subparagraph (A);

"(C) any person having possession, custody or care of records (including electronically generated or machine readable data) relating to the importation or other activity described in subparagraph (A); or"; and

(E) by striking out the comma at the end of subparagraph (D) and inserting a semicolon.

(2) Subsections (b) and (c) are redesignated as subsections (c) and (d), respectively.

(3) The following new subsection is inserted after subsection (a):

"(b) REGULATORY AUDIT PROCEDURES.—

"(1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.

"(2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.

"(3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the appropriate regional commissioner, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.

"(4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the appropriate regional commissioner provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, United States Code, a copy of the

formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.

"(5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.".

(4) Subsection (d) (as redesignated by paragraph (2)) is amended—

(A) by striking out "or documents" in paragraph (1)(A) and inserting "documents, or electronically generated or machine readable data";

(B) by inserting ", unless such customhouse broker is the importer of record on an entry" after "broker" in paragraph (1)(C)(i);

(C) by striking out "import" in each of paragraphs (2)(B) and (4)(B);

(D) by inserting "described in section 508" after "transactions" in each of paragraphs (2)(B) and (4)(B); and

(E) by inserting ", fees," after "duties" in paragraph (4)(A).

(5) The following new subsections are added at the end thereof:

"(e) LIST OF RECORDS AND INFORMATION.—The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A).

"(f) RECORDKEEPING COMPLIANCE PROGRAM.—

"(1) IN GENERAL.—After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 508(a) may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.

"(2) CERTIFICATION.—A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program or after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certification requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it—

"(A) understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved;

"(B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;

"(C) has in place procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service;

"(D) has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining

familiarity with the recordkeeping requirements of the Customs Service;

"(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original records; and

"(F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding such program.

"(g) PENALTIES.—

"(1) DEFINITION.—For purposes of this subsection, the term 'information' means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A).

"(2) EFFECTS OF FAILURE TO COMPLY WITH DEMAND.—Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) the following provisions apply:

"(A) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.

"(B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

"(C) In addition to any penalty imposed under subparagraph (A) or (B) regarding demanded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise—

"(i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or

"(ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 514 or 520, at the applicable column 1 general rate of duty;

except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.

"(3) AVOIDANCE OF PENALTY.—No penalty may be assessed under this subsection if the person can show—

"(A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

"(B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or

"(C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.

"(4) PENALTIES NOT EXCLUSIVE.—Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for—

"(A) a penalty imposed under section 592 for a material omission of the demanded information, or

"(B) disciplinary action taken under section 641.

"(5) REMISSION OR MITIGATION.—A penalty imposed under this section may be remitted or mitigated under section 618.

"(6) CUSTOMS SUMMONS.—Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.

"(7) ALTERNATIVES TO PENALTIES.—

"(A) IN GENERAL.—When a recordkeeper who—

"(i) has been certified as a participant in the recordkeeping compliance program under subsection (f); and

"(ii) is generally in compliance with the appropriate procedures and requirements of the program;

does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

"(B) CONTENTS OF NOTICE.—A notice of violation issued under subparagraph (A) shall—

"(i) state that the recordkeeper has violated the recordkeeping requirements;

"(ii) indicate the record or information which was demanded; and

"(iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties.

"(C) RESPONSE TO NOTICE.—Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

"(D) REGULATIONS.—The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total

number of importations, the nature of the demanded records and the recordkeeper's cooperation.".

SEC. 8316. JUDICIAL ENFORCEMENT.

The second sentence of section 510(a) (19 U.S.C. 1510(a)) is amended by inserting "and such court may assess a monetary penalty" after "as a contempt thereof".

SEC. 8317. REVIEW OF PROTESTS.

Section 515 (19 U.S.C. 1515) is amended by inserting at the end the following new subsections:

"(c) If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the Commissioner of Customs a written request that the denial of the application for further review be set aside. Such request must be filed within 90 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appropriate. If the Commissioner of Customs fails to act within 30 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2636 of title 28, United States Code. If an action is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any administrative action taken subsequent to the commencement of the action is null and void.

"(d) If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written request by the protesting party filed with the appropriate district director within 90 days after the date of the protest denial, void the denial of the protest.".

SEC. 8318. REPEAL OF PROVISION RELATING TO RELIQUIDATION ON ACCOUNT OF FRAUD.

Section 521 (19 U.S.C. 1521) is repealed.

SEC. 8319. PENALTIES RELATING TO MANIFESTS.

Section 584 (19 U.S.C. 1584) is amended—

(1) by amending subsection (a)—

(A) by striking out "appropriate customs officer" wherever it appears and inserting "Customs Service",

(B) by striking out "officer demanding the same" in paragraph (1) and inserting "officer (whether of the Customs Service or the Coast Guard) demanding the same", and

(C) by inserting "(electronically or otherwise)" after "submission" in the last sentence of paragraph (1); and

(2) by amending subsection (b)—

(A) by striking out "the appropriate customs officer", "he" (except in paragraph (1)(F)), and "such officer" wherever they appear and inserting "the Customs Service";

(B) by striking out "written" wherever it appears (other than paragraph (1)(F)),

(C) by inserting "or electronically transmit" after "issue" wherever it appears, and

(D) by striking out "his intention" in the first sentence of paragraph (1) and inserting "intent".

SEC. 8320. UNLAWFUL UNLADING OR TRANSSHIPMENT.

Section 586 (19 U.S.C. 1586) is amended—

(1) by inserting ", or of a hovering vessel which has received or delivered merchandise while outside the territorial sea," after "from a foreign port or place" wherever it appears; and

(2) by amending subsection (f)—

(A) by striking out "the appropriate customs officer of the" and "the appropriate customs officer within the" and inserting "the Customs Service at the"; and

(B) by striking out "the appropriate customs officer is" and inserting "the Customs Service is".

SEC. 8321. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE; PRIOR DISCLOSURE.

Section 592 (19 U.S.C. 1592) is amended—

(1) by inserting "or electronically transmitted data or information" after "document" in subsection (a)(1)(A)(i);

(2) by inserting "The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct." at the end of subsection (a)(2);

(3) by amending subsection (b)—

(A) by amending the first sentence of paragraph (1)(A)—

(i) by striking out "the appropriate customs officer" and inserting "the Customs Service",

(ii) by striking out "he" and inserting "it", and

(iii) by striking out "his" and inserting "its", and

(B) by amending paragraph (2)—

(i) by striking out "the appropriate customs officer" wherever it appears and inserting "the Customs Service",

(ii) by striking out "such officer" wherever it appears and inserting "the Customs Service", and

(iii) by striking out "he" wherever it appears and inserting "it";

(4) by amending subsection (c)(4)—

(A) by striking "time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his" in subparagraphs (A)(i) and (B), and inserting "time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its"; and

(B) by inserting after the last sentence the following: "For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on

which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed."; and

(5) by amending subsection (d)—

(A) by striking out "the appropriate customs officer" and inserting "the Customs Service",

(B) by striking out "duties" wherever it appears and inserting "duties, taxes, or fees"; and

(C) by inserting ", TAXES OR FEES" after "DUTIES" in the sideheading.

SEC. 8322. PENALTIES FOR FALSE DRAWBACK CLAIMS.

(a) AMENDMENT.—Part V of title IV is amended by inserting after section 593 the following new section:

"SEC. 593A. PENALTIES FOR FALSE DRAWBACK CLAIMS.

"(a) PROHIBITION.—

"(1) GENERAL RULE.—No person, by fraud, or negligence—

"(A) may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of—

"(i) any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or

"(ii) any omission which is material; or

"(B) may aid or abet any other person to violate subparagraph (A).

"(2) EXCEPTION.—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

"(b) PROCEDURES.—

"(1) PREPENALTY NOTICE.—

"(A) IN GENERAL.—If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, the Customs Service shall issue to the person concerned a written notice of intent to issue a claim for a monetary penalty. Such notice shall—

"(i) identify the drawback claim;

"(ii) set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

"(iii) specify all laws and regulations allegedly violated;

"(iv) disclose all the material facts which establish the alleged violation;

"(v) state whether the alleged violation occurred as a result of fraud or negligence;

"(vi) state the estimated actual or potential loss of revenue due to the drawback claim, and, taking into

account all circumstances, the amount of the proposed monetary penalty; and

"(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

"(B) EXCEPTIONS.—The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less. In such cases, the Customs Service may proceed directly with a penalty claim.

"(C) PRIOR APPROVAL.—No prepenalty notice in which the alleged violation occurred as a result of fraud shall be issued without the prior approval of Customs Headquarters.

"(2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

"(c) MAXIMUM PENALTIES.—

"(1) FRAUD.—A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

"(2) NEGLIGENCE.—

"(A) IN GENERAL.—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

"(B) REPETITIVE VIOLATIONS.—If the Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in an amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

"(3) PRIOR DISCLOSURE.—

"(A) IN GENERAL.—Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed—

"(i) if the violation resulted from fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

"(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1986 on the amount of actual revenue of which the United States is or may be deprived during the period that—

"(I) begins on the date of the overpayment of the claim; and

"(II) ends on the date on which the person concerned tenders the amount of the overpayment.

"(B) CONDITION AFFECTING PENALTY LIMITATIONS.—The limitations in subparagraph (A) on the amount of the monetary penalty to be assessed under subsection (c) apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.

"(C) BURDEN OF PROOF.—The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

"(4) COMMENCEMENT OF INVESTIGATION.—For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

"(5) EXCLUSIVITY.—Penalty claims under this section shall be the exclusive civil remedy for any drawback related violation of subsection (a).

"(d) DEPRIVATION OF LAWFUL REVENUE.—Notwithstanding section 514, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a), the Customs Service shall require that such drawback claim be restored whether or not a monetary penalty is assessed.

"(e) DRAWBACK COMPLIANCE PROGRAM.—

"(1) IN GENERAL.—After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs

Service under paragraph (2). Participation in the drawback compliance program is voluntary.

"(2) CERTIFICATION.—A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it—

"(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;

"(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;

"(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;

"(D) has designated a dependable individual or individuals to be responsible for compliance under the program and whose duties include maintaining familiarity with the drawback requirements of the Customs Service;

"(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or recordkeeping formats other than the original records; and

"(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.

"(f) ALTERNATIVES TO PENALTIES.—

"(1) IN GENERAL.—When a party that—

"(A) has been certified as a participant in the drawback compliance program under subsection (e); and

"(B) is generally in compliance with the appropriate procedures and requirements of the program;

commits a violation of subsection (a), the Customs Service, shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

"(2) CONTENTS OF NOTICE.—A notice of violation issued under paragraph (1) shall—

"(A) state that the party has violated subsection (a);

"(B) explain the nature of the violation; and

"(C) warn the party that future violations of subsection (a) may result in the imposition of monetary penalties.

"(3) RESPONSE TO NOTICE.—Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

"(g) REPETITIVE VIOLATIONS.—

"(1) A party who has been issued a written notice under subsection (f)(1) and subsequently commits a repeat negligent violation involving the same issue is subject to the following monetary penalties:

"(A) 2D VIOLATION.—An amount not to exceed 20 percent of the loss of revenue.

"(B) 3RD VIOLATION.—An amount not to exceed 50 percent of the loss of revenue.

"(C) 4TH AND SUBSEQUENT VIOLATIONS.—An amount not to exceed 100 percent of the loss of revenue.

"(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) commits an alleged violation which was not repetitive, the party shall be issued a 'warning letter', and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).

"(h) REGULATION.—The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify that for purposes of subsection (g), a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

"(i) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

"(1) all issues, including the amount of the penalty, shall be tried de novo;

"(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence; and

"(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by the Customs Service. The Customs Service shall publish notice of this date in the Customs Bulletin.

SEC. 8323. INTERPRETIVE RULINGS AND DECISIONS; PUBLIC INFORMATION.

Section 625 (19 U.S.C. 1625) is amended to read as follows:

"SEC. 625. INTERPRETIVE RULINGS AND DECISIONS; PUBLIC INFORMATION.

"(a) PUBLICATION.—Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall

otherwise make such ruling or decision available for public inspection.

"(b) APPEALS.—A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.

"(c) MODIFICATION AND REVOCATION.—A proposed interpretive ruling or decision which would—

"(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

"(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

"(d) PUBLICATION OF CUSTOMS DECISIONS THAT LIMIT COURT DECISIONS.—A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.

"(e) PUBLIC INFORMATION.—The Secretary may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5, United States Code.".

SEC. 8324. SEIZURE AUTHORITY.

Section 596(c) (19 U.S.C. 1595a(c)) is amended to read as follows:

"(c) Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:

"(1) The merchandise shall be seized and forfeited if it—

"(A) is stolen, smuggled, or clandestinely imported or introduced;

"(B) is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law; or

"(C) is a contraband article, as defined in section 1 of the Act of August 9, 1939 (49 U.S.C. App. 781).

"(2) The merchandise may be seized and forfeited if—

"(A) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;

"(B) its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;

"(C) it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 42, 43, or 45 of the Act of July 5, 1946 (Public Law 95-410; 15 U.S.C. 1124, 1125, or 1127), section 506 or 509 of title 17, United States Code, or section 2318 or 2320 of title 18, United States Code);

"(D) it is trade dress merchandise involved in the violation of a court order citing section 43 of such Act of July 5, 1946 (15 U.S.C. 1125);

"(E) it is merchandise which is marked intentionally in violation of section 304; or

"(F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 304.

"(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, the merchandise shall be subject to detention in accordance with section 499 unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.

"(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification or value of merchandise and there are no issues as to the admissibility of the merchandise into the United States, it shall not be seized except in accordance with section 592.

"(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may—

"(A) remit the forfeiture under section 618, or

"(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.".

PART II—NATIONAL CUSTOMS AUTOMATION PROGRAM

SEC. 8331. NATIONAL CUSTOMS AUTOMATION PROGRAM.

Part I of title IV is amended—

(1) by striking out

"PART I—DEFINITIONS

and inserting

"PART I—DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM

"Subpart A—Definitions"; and

(2) by inserting after section 402 the following:

"Subpart B—National Customs Automation Program

"SEC. 411. NATIONAL CUSTOMS AUTOMATION PROGRAM.

"(a) ESTABLISHMENT.—The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the 'Program') which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

"(1) Existing components:

"(A) The electronic entry of merchandise.

"(B) The electronic entry summary of required information.

"(C) The electronic transmission of invoice information.

"(D) The electronic transmission of manifest information.

"(E) Electronic payments of duties, fees, and taxes.

"(F) The electronic status of liquidation and reliquidation.

"(G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).

"(2) Planned components:

"(A) The electronic filing and status of protests.

"(B) The electronic filing (including remote filing under section 414) of entry information with the Customs Service at any location.

"(C) The electronic filing of import activity summary statements and reconciliation.

"(D) The electronic filing of bonds.

"(E) The electronic penalty process.

"(F) The electronic filing of drawback claims, records, or entries.

"(G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

"(b) PARTICIPATION IN PROGRAM.—The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. Participation in the Program is voluntary.

"SEC. 412. PROGRAM GOALS.

"The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

"(1) is uniform and consistent;

"(2) is as minimally intrusive upon the normal flow of business activity as practicable; and

"(3) improves compliance.

"SEC. 413. IMPLEMENTATION AND EVALUATION OF PROGRAM.

"(a) OVERALL PROGRAM PLAN.—

"(1) IN GENERAL.—Before the 180th day after the date of the enactment of this Act, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

"(A) a general description of the ultimate configuration of the Program;

"(B) a description of each of the existing components of the Program listed in section 411(a)(1); and

"(C) estimates regarding the stages on which planned components of the Program listed in section 411(a)(2) will be brought on-line.

"(2) ADDITIONAL INFORMATION.—In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

"(A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 412; and

"(B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on—

"(i) importers, brokers, and other users of the Program, and

"(ii) Customs Service occupations, operations, processes, and systems.

"(b) IMPLEMENTATION PLAN, TESTING, AND EVALUATION.—

"(1) IMPLEMENTATION PLAN.—For each of the planned components of the Program listed in section 411(a)(2), the Secretary shall—

"(A) develop an implementation plan;

"(B) test the component in order to assess its viability;

"(C) evaluate the component in order to assess its contribution toward achieving the program goals; and

"(D) transmit to the Committees the implementation plan, the testing results, and an evaluation report.

In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

"(2) IMPLEMENTATION.—

"(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date which is 30 days after paragraph (1)(D) is complied with.

"(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding—

"(i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

"(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

"(3) EVALUATION AND REPORT.—The Secretary shall—

"(A) develop a user satisfaction survey of parties participating in the Program;

"(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2d fiscal year;

"(C) with respect to the existing Program component listed in section 411(a)(1)(G) transmit to the Committees—

"(i) a written evaluation of such component before the 180th day after the date of the enactment of this section and before the implementation of the planned Program components listed in section 411(a)(2) (B) and (C), and

"(ii) a report on such component for each of the 3 full fiscal years occurring after the date of the enactment of this section, which report shall be transmitted not later than the 90th day after the close of each such year; and

"(D) not later than the 90th day after the close of fiscal year 1993, and annually thereafter through fiscal year 1999, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 411(a)(2).

In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

"(c) COMMITTEES.—For purposes of this section, the term 'Committees' means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

"SEC. 414. REMOTE LOCATION FILING.

"(a) CORE ENTRY INFORMATION.—

"(1) IN GENERAL.—A Program participant may file an entry of merchandise with the Customs Service from a location other than the district designated in the entry for examination (hereafter in this section referred to as a 'remote location') if—

"(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2) regarding such method of filing; and

"(B) the participant elects to file from the remote location.

"(2) REQUIREMENTS.—In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

"(A) The electronic entry of merchandise.

"(B) The electronic entry summary of required information.

"(C) The electronic transmission of invoice information (when required by the Customs Service).

"(D) The electronic payment of duties, fees, and taxes.

"(E) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.

"(3) ALTERNATIVE FILING.—Any Program participant that is eligible under paragraph (1) to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d).

"(b) ADDITIONAL ENTRY INFORMATION.—

"(1) IN GENERAL.—A Program participant that is eligible under subsection (a) to file entry information from a remote location may, if the Customs Service is satisfied that the participant meets the requirements under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.

"(2) REQUIREMENTS.—The Secretary shall publish, and periodically update, a list of those capabilities within the existing and planned components of the Program that a Program participant must have for purposes of this subsection.

"(3) FILING OF ADDITIONAL INFORMATION.—

"(A) IF INFORMATION ELECTRONICALLY ACCEPTABLE.—A Program participant that is eligible under paragraph (1) to file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.

"(B) ALTERNATIVE FILING.—If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.

"(C) APPROPRIATE LOCATION.—For purposes of subparagraph (B), the 'appropriate location' is—

"(i) before January 1, 1999, a designated location; and

"(ii) after December 31, 1998—

"(I) if the paper documentation is required for release, a designated location; or

"(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.

"(D) OTHER.—A Program participant that is eligible under paragraph (1) to file additional information electronically from a remote location but chooses not to do so must

file the paper documentation with respect to the information at a designated location.

"(c) POST-ENTRY SUMMARY INFORMATION.—A Program participant that is eligible to file electronically entry information under subsection (a) and additional information under subsection (b) from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.

"(d) DEFINITION OF DESIGNATED LOCATION.—For purposes of this section, the term 'designated location' means a customs office located in the customs district designated by the entry filer for purposes of customs examination of the merchandise.".

SEC. 8332. DRAWBACK AND REFUNDS.

(a) AMENDMENTS.—Section 313 (19 U.S.C. 1313) is amended as follows:

(1) Subsection (a) is amended—

(A) by inserting "or destruction under customs supervision" after "Upon the exportation";

(B) by inserting "provided that those articles have not been used prior to such exportation or destruction," after "manufactured or produced in the United States with the use of imported merchandise,";

(C) by inserting "or destruction" after "refunded upon the exportation"; and

(D) by striking out "wheat imported after ninety days after the date of the enactment of this Act" and inserting "imported wheat".

(2) Subsection (b) is amended—

(A) by striking out "duty-free or domestic merchandise" and inserting "any other merchandise (whether imported or domestic)";

(B) by inserting ", or destruction under customs supervision," after "there shall be allowed upon the exportation";

(C) by inserting "or destroyed" after "notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported";

(D) by inserting ", but only if those articles have not been used prior to such exportation or destruction" after "an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported"; and

(E) by inserting "or destruction under customs supervision" after "but the total amount of drawback allowed upon the exportation".

(3) Subsection (c) is amended to read as follows:

"(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Upon the exportation, or destruction under the supervision of the Customs Service, of merchandise—

"(1) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation;

"(2) upon which the duties have been paid;

"(3) which has been entered or withdrawn for consumption; and

"(4) which, within 3 years after release from the custody of the Customs Service, has been returned to the custody of the Customs Service for exportation or destruction under the supervision of the Customs Service;

the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.".

(4) Subsection (j) is amended to read as follows:

"(j) UNUSED MERCHANDISE DRAWBACK.—

"(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

"(A) is, before the close of the 3-year period beginning on the date of importation—

"(i) exported, or

"(ii) destroyed under customs supervision; and

"(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback.

"(2) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic), that—

"(A) is commercially interchangeable with such imported merchandise;

"(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and

"(C) before such exportation or destruction—

"(i) is not used within the United States, and

"(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph (if that party paid the duty, tax, or fee on the imported merchandise (established by means of either an entry summary or a certificate of delivery));

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

"(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amount-

ing to manufacture or production for drawback purposes under the preceding provisions of this section on—

"(A) the imported merchandise itself in cases to which paragraph (1) applies, or

"(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies,

shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).".

(5) Subsection (l) is amended by striking out "the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 309(b) shall be filed and completed," and inserting "the authority for the electronic submission of drawback entries".

(6) The following new subsections are inserted after subsection (p):

"(q) PACKAGING MATERIAL.—Packaging material, when used on or for articles or merchandise exported or destroyed under subsection (a), (b), (c), or (j), shall be eligible under such subsection for refund, as drawback, of 99 percent of any duty, tax, or fee imposed under Federal law on the importation of such material.

"(r) FILING DRAWBACK CLAIMS.—

"(1) A drawback entry and all documents necessary to complete a drawback claim, including those issued by one customs officer to another, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that a customs officer was responsible for the untimely filing.

"(2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.

"(s) DESIGNATION OF MERCHANDISE BY SUCCESSOR.—

"(1) For purposes of subsection (b), a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.

"(2) For purposes of subsection (j)(2), a drawback successor may designate imported merchandise upon which the predecessor, before the date of succession, paid the duty, tax, or fee related to the importation of the merchandise as the basis for drawback on merchandise possessed by the drawback successor after the date of succession.

"(3) For purposes of this subsection, the term 'drawback successor' means an entity to which another entity (in this subsection referred to as the 'predecessor') has transferred by written agreement, merger, or corporate resolution all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor, or all or substantially all of

the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty and personalty exceeds the value of all transferred intangibles.

"(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor's records) certifies that—

"(A) the transferred merchandise was not and will not be claimed by the predecessor, and

"(B) the predecessor did not and will not issue any certificate to any other person that would enable that person to claim drawback.

"(t) DRAWBACK CERTIFICATES.—Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued.

"(u) ELIGIBILITY OF ENTERED OR WITHDRAWN MERCHANDISE.—Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.

"(v) MULTIPLE DRAWBACK CLAIMS.—Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to—

(1) any drawback entry made after September 30, 1993; and

(2) any drawback entry made before October 1, 1993, if the liquidation of the entry is not final as of that date.

SEC. 8333. EFFECTIVE DATE OF RATES OF DUTY.

Section 315 (19 U.S.C. 1315) is amended—

(1) by striking out "appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury," in the first sentence of subsection (a) and inserting "Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe,";

(2) by striking out "customs custody" in the first sentence of subsection (b) and inserting "custody of the Customs Service"; and

(3) by striking out "section 1001, paragraph 813" in subsection (c) and inserting "chapter 98 of the Harmonized Tariff Schedule of the United States".

SEC. 8334. DEFINITIONS.

Section 401 (19 U.S.C. 1401) is amended—

(1) by amending subsection (k) to read as follows:

"(k) The term 'hovering vessel' means—

"(1) any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or at-

tempted introduction of merchandise into the United States in violation of the laws of the United States; and

"(2) any vessel which has visited a vessel described in paragraph (1)."; and

(2) by inserting at the end thereof the following new subsections:

"(n) The term 'electronic transmission' means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.

"(o) The term 'electronic entry' means the electronic transmission to the Customs Service of—

"(1) entry information required for the entry of merchandise, and

"(2) entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

"(p) The term 'electronic data interchange system' means any established mechanism approved by the Commissioner of Customs through which information can be transferred electronically.

"(q) The term 'National Customs Automation Program' means the program established under section 411.

"(r) The term 'import activity summary statement' refers to data or information transmitted electronically to the Customs Service, in accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

"(s) The term 'reconciliation' means an electronic process, initiated at the request of an importer, under which the elements of an entry, other than those elements related to the admissibility of the merchandise, that are undetermined at the time of entry summary are provided to the Customs Service at a later time. A reconciliation is treated as an entry for purposes of liquidation, reliquidation, and protest.".

SEC. 8335. MANIFESTS.

Section 431 (19 U.S.C. 1431) is amended—

(1) by amending subsections (a) and (b) to read as follows:

"(a) IN GENERAL.—Every vessel required to make entry under section 434 or obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) shall have a manifest that complies with the requirements prescribed under subsection (d).

"(b) PRODUCTION OF MANIFEST.—Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d). A manifest may be supplemented by bill of lading data supplied by the issuer of such bill.

If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties."; and

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

"(d) REGULATIONS.—

"(1) IN GENERAL.—The Secretary shall by regulation—

"(A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a);

"(B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;

"(C) prescribe the manner of production for, and the delivery for electronic transmittal of, the manifest required by subsection (a); and

"(D) prescribe the manner for supplementing manifests with bill of lading data under subsection (b).

"(2) LETTERS AND DOCUMENTS SHIPMENTS.—For purposes of paragraph (1)(B)—

"(A) the Customs Service may require with respect to letters and documents shipments—

"(i) that they be segregated by country of origin, and

"(ii) additional examination procedures that are not necessary for individually manifested shipments;

"(B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and

"(C) the term 'letters and documents' means—

"(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

"(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, United States Code, and

"(iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.".

SEC. 8336. INVOICE CONTENTS.

Section 481 (19 U.S.C. 1481) is amended—

(1) by amending subsection (a)—

(A) by amending the matter preceding paragraph (1) to read as follows: "IN GENERAL.—All invoices of merchandise to be imported into the United States and any electronic equivalent thereof considered acceptable by the Secretary in regulations prescribed under this section shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:",

(B) by amending paragraph (3) to read as follows:

"(3) A detailed description of the merchandise, including the commercial name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;", and

(C) by amending paragraph (10) to read as follows:

"(10) Any other fact that the Secretary may by regulation require as being necessary to a proper appraisement, examination and classification of the merchandise.";

(2) by amending subsection (c) to read as follows:

"(c) IMPORTER PROVISION OF INFORMATION.—Any information required to be set forth on an invoice may alternatively be provided by any of the parties qualifying as an 'importer of record' under section 484(a)(2)(B) by such means, in such form or manner, and within such time as the Secretary shall by regulation prescribe."; and

(3) by inserting before the period at the end of subsection (d) the following: "and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section".

SEC. 8337. ENTRY OF MERCHANDISE.

Section 484 (19 U.S.C. 1484) is amended to read as follows:

"SEC. 484. ENTRY OF MERCHANDISE.

"(a) REQUIREMENT AND TIME.—

"(1) Except as provided in sections 490, 498, 552, 553, and 336(j), one of the parties qualifying as 'importer of record' under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care—

"(A) make entry therefor by filing with the Customs Service—

"(i) such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and

"(ii) notification whether an import activity summary statement will be filed; and

"(B) complete the entry by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to—

"(i) properly assess duties on the merchandise,

"(ii) collect accurate statistics with respect to the merchandise, and

"(iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

"(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time

periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, covering entries made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month.

"(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this Act, the importer of record must be one of the parties who is eligible to file the documentation or information required by this section.

"(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

"(b) RECONCILIATION.—A party that electronically transmits an entry summary or import activity summary statement may at the time of filing such summary or statement notify the Customs Service of his intention to file a reconciliation pursuant to such regulations as the Secretary may prescribe. Such reconciliation must be filed by the importer of record within such time period as is prescribed by regulation but no later than 15 months following the filing of the entry summary or import activity summary statement. Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as the Secretary may prescribe.

"(c) RELEASE OF MERCHANDISE.—The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.

"(d) SIGNING AND CONTENTS.—Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The

entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

"(e) PRODUCTION OF INVOICE.—The Secretary may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

"(f) STATISTICAL ENUMERATION.—The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

"(g) STATEMENT OF COST OF PRODUCTION.—Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisement of such merchandise.

"(h) ADMISSIBILITY OF DATA ELECTRONICALLY TRANSMITTED.—Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.".

SEC. 8338. APPRAISEMENT AND OTHER PROCEDURES.

Section 500 (19 U.S.C. 1500) is amended—

(1) by striking out "The appropriate customs officer" and inserting "The Customs Service";

(2) by striking out "appraise" in subsection (a) and inserting "fix the final appraisement of";

(3) by striking out "ascertain the" in subsection (b) and inserting "fix the final";

(4) by amending subsection (c)—

(A) by inserting "final" after "fix the", and

(B) by inserting ", taxes, and fees" after "duties" wherever it appears; and

(5) by amending subsections (d) and (e) to read as follows:

"(d) liquidate the entry and reconciliation, if any, of such merchandise; and

"(e) give or transmit, pursuant to an electronic data interchange system, notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall by regulation prescribe.".

SEC. 8339. VOLUNTARY RELIQUIDATIONS.

Section 501 (19 U.S.C. 1501) is amended—

(1) by striking out "the appropriate customs officer on his own initiative" and inserting "the Customs Service";

(2) by inserting "or transmitted" after "given" wherever it appears; and

(3) by amending the section heading to read as follows:

"SEC. 501. VOLUNTARY RELIQUIDATIONS BY THE CUSTOMS SERVICE.".

SEC. 8340. APPRAISEMENT REGULATIONS.

Section 502 (19 U.S.C. 1502) is amended—

(1) by amending subsection (a)—

(A) by inserting "(including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned)" after "law",

(B) by striking out "ports of entry, and" inserting "ports of entry. The Secretary",

(C) by inserting "or classifying" after "appraising" wherever it appears, and

(D) by striking out "such port" and inserting "any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port"; and

(2) by striking out subsection (b) and redesignating subsection (c) as subsection (b).

SEC. 8341. LIMITATION ON LIQUIDATION.

(a) AMENDMENTS.—Section 504 (19 U.S.C. 1504) is amended—

(1) by amending subsection (a)—

(A) by striking out "Except as provided in subsection (b)," and inserting "Unless an entry is extended under subsection (b) or suspended as required by statute or court order,",

(B) by striking out "or" at the end of paragraph (2),

(C) by inserting "or" after the semicolon at the end of paragraph (3), and

(D) by inserting the following new paragraph after paragraph (3):

"(4) if a reconciliation is filed, or should have been filed, the date of the filing under section 484 or the date the reconciliation should have been filed;"; and

(2) by amending subsections (b), (c), and (d) to read as follows:

"(b) EXTENSION.—The Secretary may extend the period in which to liquidate an entry if—

"(1) the information needed for the proper appraisement or classification of the merchandise, or for insuring compliance with applicable law, is not available to the Customs Service; or

"(2) the importer of record requests such extension and shows good cause therefor.

The Secretary shall give notice of an extension under this subsection to the importer of record and the surety of such importer of record. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty,

value, quantity, and amount of duty asserted at the time of entry by the importer of record at the expiration of 4 years from the applicable date specified in subsection (a).

"(c) NOTICE OF SUSPENSION.—If the liquidation of any entry is suspended, the Secretary shall by regulation require that notice of the suspension be provided, in such manner as the Secretary considers appropriate, to the importer of record and to any authorized agent and surety of such importer of record.

"(d) REMOVAL OF SUSPENSION.—When a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record.".

SEC. 8342. PAYMENT OF DUTIES AND FEES.

(a) AMENDMENT TO SECTION 505.—Section 505 (U.S.C. 1505) is amended to read as follows:

"SEC. 505. PAYMENT OF DUTIES AND FEES.

"(a) DEPOSIT OF ESTIMATED DUTIES, FEES, AND INTEREST.—Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation, the amount of duties and fees estimated to be payable thereon. Such regulations may provide that estimated duties and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secretary, accruing from the first date of the month the statement is required to be filed until the date such statement is actually filed.

"(b) COLLECTION OR REFUND OF DUTIES, FEES, AND INTEREST DUE UPON LIQUIDATION OR RELIQUIDATION.—The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys deposited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.

"(c) INTEREST.—Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation.

"(d) DELINQUENCY.—If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b), any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.".

(b) CONFORMING AMENDMENT.—Subsection (d) of section 520 (19 U.S.C. 1520(d)) is repealed.

SEC. 8343. ABANDONMENT AND DAMAGE.

Section 506 (19 U.S.C. 1506) is amended—

(1) by striking out "the appropriate customs officer" and "such customs officer" wherever they appear and inserting "the Customs Service";

(2) by amending paragraph (1)—

(A) by striking out "not sent to the appraiser's stores for" and inserting "released without an",

(B) by striking out "of the examination packages or quantities of merchandise",

(C) by striking out "the appraiser's stores" and inserting "the Customs Service", and

(D) by inserting "or entry" after "invoice"; and

(3) by amending paragraph (2)—

(A) by inserting ", electronically or otherwise," after "files", and

(B) by striking out "written".

SEC. 8344. CUSTOMS OFFICER'S IMMUNITY.

Section 513 (19 U.S.C. 1513) is amended to read as follows:

"SEC. 513. CUSTOMS OFFICER'S IMMUNITY.

"No customs officer shall be liable in any way to any person for or on account of—

"(1) any ruling or decision regarding the appraisement or the classification of any imported merchandise or regarding the duties, fees, and taxes charged thereon;

"(2) the collection of any dues, charges, duties, fees, and taxes on or on account of any imported merchandise, or

"(3) any other matter or thing as to which any person might under this Act be entitled to protest or appeal from the decision of such officer.".

SEC. 8345. PROTESTS.

Section 514 (19 U.S.C. 1514) is amended—

(1) by amending subsection (a)—

(A) by striking out "appropriate customs officer" in the text preceding paragraph (1) and inserting "Customs Service",

(B) by inserting "or reconciliation as to the issues contained therein," after "entry," in paragraph (5),

(C) by striking out "and" and inserting "or" at the end of paragraph (6),

(D) by striking out the comma at the end of paragraph (7) and inserting a semicolon; and

(E) by striking out "appropriate customs officer, who" in the text following paragraph (7) and inserting "Customs Service, which";

(2) by amending subsection (b) by striking out "appropriate customs officer" and inserting "Customs Service";

(3) by amending the first sentence of subsection (c)(1) to read as follows: "A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—

"(A) each decision described in subsection (a) as to which protest is made;

"(B) each category of merchandise affected by each decision set forth under paragraph (1);

"(C) the nature of each objection and the reasons therefor; and

"(D) any other matter required by the Secretary by regulation.";

(4) by redesignating paragraph (2) of subsection (c) as paragraph (3) and by striking out "such customs officer" in such redesignated paragraph and inserting "the Customs Service";

(5) by designating the last sentence of paragraph (1) of subsection (c) as paragraph (2);

(6) by striking out "customs officer" in subsection (d) and inserting "Customs Service"; and

(7) by amending the section heading to read as follows:

"SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.".

SEC. 8346. REFUNDS AND ERRORS.

Section 520 (19 U.S.C. 1520) is amended—

(1) by inserting "or reconciliation" after "entry" in paragraphs (1) and (4) of subsection (a); and

(2) by amending subsection (c)—

(A) by striking out "appropriate customs officer" wherever it appears and inserting "Customs Service",

(B) by inserting "or reconciliation" after "reliquidate an entry", and

(C) by inserting ", whether or not resulting from or contained in electronic transmission," after "inadvertence" the first place it appears in paragraph (1).

SEC. 8347. BONDS AND OTHER SECURITY.

Section 623 (19 U.S.C. 1623) is amended—

(1) by inserting "and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service" after "form of such bond" in subsection (b)(1); and

(2) by inserting at the end of subsection (d) the following new sentence: "Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.".

SEC. 8348. CUSTOMHOUSE BROKERS.

Section 641 (19 U.S.C. 1641) is amended—

(1) by adding at the end of subsection (a)(2) the following new sentence: "It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.";

(2) by amending subsection (c)(1) to read as follows:

"(1) IN GENERAL.—Each person granted a customs broker's license under subsection (b) shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:

"(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.

"(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.";

(3) by inserting at the end of subsection (c) the following new paragraph:

"(4) APPOINTMENT OF SUBAGENTS.—Notwithstanding subsection (c)(1), upon the implementation by the Secretary under section 413(b)(2) of the component of the National Customs Automation Program referred to in section 411(a)(2)(B), a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.";

(4) by amending subsection (d)(2)(B)—

(A) by striking out "appropriate customs officer" and inserting "Customs Service" in the first and third sentences,

(B) by striking out "he" and inserting "it" in the third sentence,

(C) by striking out "15 days" and inserting "30 days" in the third sentence,

(D) by striking out "the appropriate customs officer and the customs broker; they" and inserting "the Customs Service and the customs broker; which" in the sixth sentence,

(E) by striking out "his" and inserting "the" in the seventh sentence, and

(F) by striking out "for his decision" and inserting "for the decision" in the eighth sentence"; and

(5) by amending subsection (f) by striking out "United States Customs Service." and inserting "Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.".

SEC. 8349. CONFORMING AMENDMENTS.

(a) PLACE OF ENTRY AND UNLADING.—Section 447 (19 U.S.C. 1447) is amended by striking out "the appropriate customs officer shall consider" and inserting "the Customs Service considers".

(b) UNLADING.—Section 449 (19 U.S.C. 1449) is amended by striking out "appropriate customs officer of such port issues a permit for the unlading of such merchandise or baggage," and inserting "Customs Service issues a permit for the unlading of such merchandise or baggage at such port,".

PART III—MISCELLANEOUS AMENDMENTS TO THE TARIFF ACT OF 1930

SEC. 8351. REPORT OF ARRIVAL.

Section 433 (19 U.S.C. 1433) is amended—

(1) by amending subsection (a)(1)—

(A) by striking out "or" at the end of subparagraph (B),

(B) by inserting "or" after the semicolon at the end of subparagraph (C), and

(C) by adding after subparagraph (C) the following:

"(D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea;";

(2) by striking out "present to customs officers such" in subsection (d) and inserting "present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data,"; and

(3) by amending subsection (e) to read as follows:

"(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary—

"(1) depart from the port, place, or airport of arrival; or

"(2) discharge any passenger or merchandise (including baggage).".

SEC. 8352. ENTRY OF VESSELS.

Section 434 (19 U.S.C. 1434) amended to read as follows:

"SEC. 434. ENTRY; VESSELS.

"(a) FORMAL ENTRY.—Within 24 hours (or such other period of time as may be provided under subsection (c)(2)) after the arrival at any port or place in the United States of—

"(1) any vessel from a foreign port or place;

"(2) any foreign vessel from a domestic port;

"(3) any vessel of the United States having on board bonded merchandise or foreign merchandise for which entry has not been made; or

"(4) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea;

the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

"(b) PRELIMINARY ENTRY.—The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.

"(c) REGULATIONS.—The Secretary may by regulation—

"(1) prescribe the manner and format in which entry under subsection (a) or subsection (b), or both, must be made, and such regulations may provide that any such entry may be made electronically pursuant to an electronic data interchange system;

"(2) provide that—

"(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and

"(B) formal entry may be made before arrival; and

"(3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.".

SEC. 8353. UNLAWFUL RETURN OF FOREIGN VESSEL PAPERS.

Section 438 (19 U.S.C. 1438) is amended—

(1) by striking out "section 435" and inserting "section 434";

(2) by inserting ", or regulations issued thereunder," after "of this Act"; and

(3) by striking out "the appropriate customs officer of the port where such vessel has been entered." and inserting "the Customs Service in the port in which such vessel has entered.".

SEC. 8354. VESSELS NOT REQUIRED TO ENTER.

Section 441 (19 U.S.C. 1441) is amended—

(1) by amending the text preceding paragraph (1) to read as follows: "The following vessels shall not be required to make entry under section 434 or to obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91):";

(2) by amending paragraph (3) to read as follows:

"(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if—

"(A) the vessel does not in any way violate the customs or navigation laws of the United States;

"(B) the vessel has not visited any hovering vessel; and

"(C) the master of the vessel, if there is on board any article required by law to be entered, reports the article to the Customs Service immediately upon arrival.";

(3) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and inserting after paragraph (3) the following:

"(4) Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade, if—

"(A) the vessel complies with the reporting requirements of section 433, and with the customs and navigation laws of the United States;

"(B) the vessel has not visited any hovering vessel; and

"(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival;"; and

(4) by amending the section heading to read as follows:

"SEC. 441. EXCEPTIONS TO VESSEL ENTRY AND CLEARANCE REQUIREMENTS.".

SEC. 8355. UNLADING.

Section 448(a) (19 U.S.C. 1448(a)) is amended—

(1) by amending the first sentence—

(A) by striking out "enter)" and inserting "enter or clear)",

(B) by striking out "or vehicle arriving from a foreign port or place" and inserting "required to make entry under section 434, or vehicle required to report arrival under section 433,",

(C) by inserting "or transmitted pursuant to an electronic data interchange system" after "issued", and

(D) by striking out the colon after "officer" and the proviso and inserting a period;

(2) by amending the second sentence—

(A) by striking out ", preliminary or otherwise,", and

(B) by inserting ", electronically pursuant to an authorized electronic data interchange system or otherwise," after "may issue a permit";

(3) by striking out the last sentence and inserting the following: "The owner or master of any vessel or vehicle, or agent thereof, shall notify the Customs Service of any merchandise or baggage so unladen for which entry is not made within the time prescribed by law or regulation. The Secretary shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given. Any such administrative penalty shall be subject to mitigation and remittance under section 618. Such unentered merchandise or bag-

gage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 490."; and

(4) by striking out "the appropriate customs officer" and "such customs officer" wherever they appear and inserting "the Customs Service".

SEC. 8356. DECLARATIONS.

Section 485 (19 U.S.C. 1485) is amended—

(1) by amending subsection (a)—

(A) by inserting "or transmit electronically" after "file", and

(B) by inserting "and manner" after "form";

(2) by amending subsection (d)—

(A) by striking out "A importer" and inserting "An importer", and

(B) by striking out "a importer" and inserting "an importer"; and

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

"(g) EXPORTED MERCHANDISE RETURNED AS UNDELIVERABLE.—With respect to any importation of merchandise to which General Headnote 4(e) of the Harmonized Tariff Schedule of the United States applies, any person who gained any benefit from, or met any obligation to, the United States as a result of the prior exportation of such merchandise shall, in accordance with regulations prescribed by the Secretary, within a reasonable time inform the Customs Service of the return of the merchandise.".

SEC. 8357. GENERAL ORDERS.

Section 490 (19 U.S.C. 1490) is amended—

(1) by amending subsection (a) to read as follows:

"(a) INCOMPLETE ENTRY.—

"(1) Whenever—

"(A) the entry of any imported merchandise is not made within the time provided by law or by regulation prescribed by the Secretary;

"(B) the entry of imported merchandise is incomplete because of failure to pay the estimated duties, fees, or interest;

"(C) in the opinion of the Customs Service, the entry of imported merchandise cannot be made for want of proper documents or other cause; or

"(D) the Customs Service believes that any merchandise is not correctly and legally invoiced;

the carrier (unless subject to subsection (c)) shall notify the bonded warehouse of such unentered merchandise.

"(2) After notification under paragraph (1), the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until—

"(A) entry is made or completed and the proper documents are produced;

"(B) the information and data necessary for entry are transmitted to the Customs Service pursuant to an authorized electronic data interchange system; or

"(C) a bond is given for the production of documents or the transmittal of data.";

(2) by amending subsection (b)—

(A) by amending the heading for subsection (b) to read as follows: "(b) REQUEST FOR POSSESSION BY CUSTOMS.—", and

(B) by striking out "appropriate customs officer" and inserting "Customs Service"; and

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

"(c) GOVERNMENT MERCHANDISE.—Any imported merchandise that—

"(1) is described in any of paragraphs (1) through (4) of subsection (a); and

"(2) is consigned to, or owned by, the United States Government;

shall be stored and disposed of in accordance with such rules and procedures as the Secretary shall by regulation prescribe.".

SEC. 8358. UNCLAIMED MERCHANDISE.

Section 491 (19 U.S.C. 1491) is amended—

(1) by amending subsection (a)—

(A) by striking out "customs custody for one year" in the first sentence and inserting "in a bonded warehouse pursuant to section 490 for 6 months",

(B) by striking out "public store or bonded warehouse for a period of one year" in the second sentence and inserting "pursuant to section 490 in a bonded warehouse for 6 months",

(C) by striking out "estimated duties and storage" in the first sentence and inserting "estimated duties, taxes, fees, interest, storage,",

(D) by inserting "taxes, fees, interest," after "duties," wherever it appears, and

(E) by striking out "duties" in the last sentence and inserting "duties, taxes, interest, and fees"; and

(2) by redesignating subsection (b) as subsection (e) and inserting after subsection (a) the following new subsections:

"(b) NOTICE OF TITLE VESTING IN THE UNITED STATES.—At the end of the 6-month period referred to in subsection (a), the Customs Service may, in lieu of sale of the merchandise, provide notice to all known interested parties that the title to such merchandise shall be considered to vest in the United States free and clear of any liens or encumbrances, on the 30th day after the date of the notice unless, before such 30th day—

"(1) the subject merchandise is entered or withdrawn for consumption; and

"(2) payment is made of all duties, taxes, fees, transfer and storage charges, and other expenses that may have accrued thereon.

"(c) RETENTION, TRANSFER, DESTRUCTION, OR OTHER DISPOSITION.—If title to any merchandise vests in the United States by op-

eration of subsection (b), such merchandise may be retained by the Customs Service for official use, transferred to any other Federal agency or to any State or local agency, destroyed, or otherwise disposed of in accordance with such regulations as the Secretary shall prescribe. All transfer and storage charges or expenses accruing on transferred merchandise shall be paid by the receiving agency, otherwise the charges and expenses on such merchandise shall be paid out of the Customs Forfeiture Fund.

"(d) PETITION.—Whenever any party, having lost a substantial interest in merchandise by virtue of title vesting in the United States under subsection (b), can establish such title or interest to the satisfaction of the Secretary within 30 days after the day on which title vests in the United States under subsection (b), or can establish to the satisfaction of the Secretary that the party did not receive notice under subsection (b), the Secretary may, upon receipt of a timely and proper petition and upon finding that the facts and circumstances warrant, pay such party out of the Customs Forfeiture Fund the amount the Secretary believes the party would have received under section 493 had the merchandise been sold and a proper claim filed. The decision of the Secretary with respect to any such petition is final and conclusive on all parties."; and

(3) by amending subsection (e) (as so redesignated) by striking out "appropriate customs officer" in paragraph (3) and inserting "Customs Service".

SEC. 8359. DESTRUCTION OF MERCHANDISE.

Section 492 (19 U.S.C. 1492) is amended—

(1) by inserting ", retained for official use, or otherwise disposed of" after "destroyed"; and

(2) by striking out "appropriate customs officer" and inserting "Customs Service".

SEC. 8360. PROCEEDS OF SALE.

Section 493 (19 U.S.C. 1493) is amended—

(1) by inserting "taxes, and fees," after "duties,";

(2) by striking out "by the appropriate customs officer in the Treasury of the United States" and inserting "in the Customs Forfeiture Fund"; and

(3) by striking out "such customs officer" and inserting "the Customs Service".

SEC. 8361. ENTRY UNDER REGULATIONS.

Section 498(a) (19 U.S.C. 1498(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) Merchandise, when—

"(A) the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than $2,500; or

"(B) different commercial facilitation and risk considerations that may vary for different classes or kinds of merchandise or different classes of transactions may dictate;"; and

(2) by striking out "$10,000" in paragraph (2) and inserting "such amounts as the Secretary may prescribe".

SEC. 8362. AMERICAN TRADEMARKS.

Section 526(e)(3) (19 U.S.C. 1526(e)(3)) is amended—

(1) by striking out "1 year" and inserting "90 days"; and

(2) by striking out "appropriate customs officers" and inserting "the Customs Service".

SEC. 8363. SEIZURE.

Section 612 (19 U.S.C. 1612) is amended—

(1) by amending subsection (a)—

(A) by striking out "the appropriate customs officer", "such officer" and "the customs officer" wherever they appear and inserting "the Customs Service", and

(B) by striking out "the appraiser's return and his" and inserting "its"; and

(2) by amending subsection (b) to read as follows:

"(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.".

SEC. 8364. CUSTOMS FORFEITURE FUND.

(a) AMENDMENT.—Section 613A (19 U.S.C. 1613b) is amended—

(1) by redesignating subparagraphs (E) and (F) of subsection (a)(3) as subparagraphs (G) and (H), respectively;

(2) by inserting after subparagraph (D) of subsection (a)(3) the following new subparagraphs:

"(E) the payment of transfer and storage charges and expenses under section 491(c);

"(F) the payment of claims against employees of the Customs Service settled by the Secretary under section 630;"; and

(3) by striking out "shall" in subsection (d) and inserting "may".

(b) REFERENCE.—After the effective date of section 9703 of title 31, United States Code, any reference in the Tariff Act of 1930 to the Customs Forfeiture Fund shall be treated as being a reference to the Department of the Treasury Forfeiture Fund established by such section 9703.

SEC. 8365. LIMITATION ON ACTIONS.

Section 621 (19 U.S.C. 1621) is amended—

(1) by inserting "any duty under section 592(d), 593A(d), or" before "any pecuniary penalty"; and

(2) by striking out "discovered:" and all that follows thereafter and inserting the following: "discovered; except that—

"(1) in the case of an alleged violation of section 592 or 593A, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and

"(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.".

SEC. 8366. COLLECTION OF FEES ON BEHALF OF OTHER AGENCIES.

The Tariff Act of 1930 is amended by inserting after section 528 the following new section:

"SEC. 529. COLLECTION OF FEES ON BEHALF OF OTHER AGENCIES.

"The Customs Service shall be reimbursed from the fees collected for the cost and expense, administrative and otherwise, incurred in collecting any fees on behalf of any government agency for any reason.".

SEC. 8367. AUTHORITY TO SETTLE CLAIMS.

The Tariff Act of 1930 is amended by inserting after section 629 the following new section:

"SEC. 630. AUTHORITY TO SETTLE CLAIMS.

"(a) IN GENERAL.—Notwithstanding any other provision of law and subject to subsection (b), the Secretary may settle, for not more than $50,000 in any one case, a claim for personal injury, death, or damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Customs Service and acting within the scope of his or her employment.

"(b) LIMITATIONS.—The Secretary may not pay a claim under subsection (a) that—

"(1) concerns commercial property;

"(2) is presented to the Secretary more than 1 year after it occurs; or

"(3) is presented by an officer or employee of the United States Government and arose within the scope of employment.

"(c) FINAL SETTLEMENT.—A claim may be paid under this section only if the claimant accepts the amount of settlement in complete satisfaction of the claim.".

SEC. 8368. USE OF PRIVATE COLLECTION AGENCIES.

The Tariff Act of 1930 is amended by inserting after section 630 the following new section:

"SEC. 631. USE OF PRIVATE COLLECTION AGENCIES.

"(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary, under such terms and conditions as the Secretary considers appropriate, shall enter into contracts and incur obligations with one or more persons for collection services to recover indebtedness arising under the customs laws and owed the United States Government, but only after the Customs Service has exhausted all administrative efforts, including all claims against applicable surety bonds, to collect the indebtedness.

"(b) CONTRACT REQUIREMENTS.—Any contract entered into under subsection (a) shall provide that—

"(1) the Secretary retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

"(2) the person is subject to—

"(A) section 552a of title 5, United States Code, to the extent provided in subsection (m) of such section; and

"(B) laws and regulations of the United States Government and State governments related to debt collection practices.".

PART IV—MISCELLANEOUS PROVISIONS AND CONSEQUENTIAL AND CONFORMING AMENDMENTS TO OTHER LAWS

SEC. 8371. AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULE.

(a) RETURN SHIPMENTS.—General Note 4 of the Harmonized Tariff Schedule of the United States is amended—

(1) by striking out "and" at the end of subdivision (c);

(2) by inserting "and" after "1930," in subdivision (d);

(3) by inserting after subdivision (d) the following:

"(e) articles exported from the United States which are returned within 45 days after such exportation from the United States as undeliverable and which have not left the custody of the carrier or foreign customs service,"; and

(4) by adding at the end the following new sentence: "No exportation referred to in subdivision (e) may be treated as satisfying any requirement for exportation in order to receive a benefit from, or meet an obligation to, the United States as a result of such exportation.".

(b) ENTRY NOT REQUIRED FOR LOCOMOTIVES AND RAILWAY FREIGHT CARS.—

(1) The Notes to chapter 86 of such Schedule are amended by inserting after note 3 the following new note:

"4. Railway locomotives (provided for in headings 8601 and 8602) and railway freight cars (provided for in heading 8606) on which no duty is owed are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.".

(2) The U.S. Notes to subchapter V of chapter 99 of such Schedule are amended by inserting after note 8 the following new note:

"9. Railway freight cars provided for in subheadings 9905.86.05 and 9905.86.10 are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.".

(c) INSTRUMENTS OF INTERNATIONAL TRAFFIC.—The U.S. Notes to subchapter III of chapter 98 of such Schedule is amended by inserting after note 3 the following new note:

"4. Instruments of international traffic, such as containers, life vans, rail cars and locomotives, truck cabs and trailers, etc. are exempt from formal entry procedures but are required to be accounted for when imported and exported into and out of the United

States, respectively, through the manifesting procedures required for all international carriers by the United States Customs Service. Fees associated with the importation of such instruments of international traffic shall be reported and paid on a periodic basis as required by regulations issued by the Secretary of the Treasury and in accordance with 1956 Customs Convention on Containers (20 UST 30; TIAS 6634).".

SEC. 8372. AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.

Section 9505(c) of the Internal Revenue Code of 1986 is amended to read as follows:

"(c) EXPENDITURES FROM THE HARBOR MAINTENANCE TRUST FUND.—

"(1) Amounts in the Harbor Maintenance Trust Fund shall be available, as provided by appropriations Acts, for making expenditures—

"(A) to carry out section 210(a) of the Water Resources Development Act of 1986 (as amended by the Water Resources Development Act of 1990),

"(B) for payments of rebates of tolls or charges pursuant to section 13(b) of the Act of May 13, 1954 (as in effect on April 1, 1987), and

"(C) for the payments of all administrative expenses incurred by the Department of the Army, the Department of the Treasury and the Department of Commerce in administering the tax imposed by section 4461.

"(2) There are authorized to be appropriated to the Department of the Army, out of the Harbor Maintenance Trust Fund established by subsection (a), for each fiscal year not to exceed $5,000,000 to be used by the Department of the Army to provide payment of all administrative expenses incurred by the Department of the Army, the Department of the Treasury, and the Department of Commerce in administering the tax imposed by section 4461.".

SEC. 8373. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) AMENDMENTS RELATING TO ACCREDITATION OF PRIVATE LABORATORIES.—Title 28 of the United States Code is amended as follows:

(1) Section 1581(g) is amended by—

(A) striking out "and" at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting "; and"; and

(C) by adding at the end the following:

"(3) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.".

(2) Section 2631(g) is amended by inserting at the end the following new paragraph:

"(3) A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.".

(3) Section 2636 is amended—

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

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

"(h) A civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation under section 499(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within 60 days after the date of the decision or order of the Customs Service.".

(4) Section 2640 is amended—

(A) by redesignating subsection (d) as subsection (e); and

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

"(d) In any civil action commenced to review any order or decision of the Customs Service under section 499(b) of the Tariff Act of 1930, the court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order.".

(5) Section 2642 is amended by inserting before the period the following: "or laboratories accredited by the Customs Service under section 499(b) of the Tariff Act of 1930".

(b) APPLICATION OF SUBSECTION (a) AMENDMENTS.—For purposes of applying the amendments made by subsection (a), any decision or order of the Customs Service denying, suspending, or revoking the accreditation of a private laboratory on or after the date of the enactment of this Act and before regulations to implement section 499(b) of the Tariff Act of 1930 are issued shall be treated as having been denied, suspended, or revoked under such section 499(b).

(c) JURISDICTION OF COURT.—Section 1582(1) of title 28, United States Code, is amended by inserting "593A," after "592,".

(d) FILING OF OFFICIAL DOCUMENTS.—Section 2635(a) of title 28, United States Code, is amended to read as follows:

"(a) In any action commenced in the Court of International Trade contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the Customs Service, as prescribed by the rules of the court, shall file with the clerk of the court, as part of the official record, any document, paper, information or data relating to the entry of merchandise and the administrative determination that is the subject of the protest or petition.".

SEC. 8374. AMENDMENTS TO THE REVISED STATUTES OF THE UNITED STATES.

(a) ENROLLED OR LICENSED VESSELS.—Section 2793 of the Revised Statutes of the United States (19 U.S.C. 288; 46 U.S.C. App. 111, 123) is amended by striking out the first semicolon and all the text that follows thereafter and inserting a period.

(b) REGISTERED VESSELS AT FOREIGN PORTS.—Section 3126 of such Revised Statutes (19 U.S.C. 293) is amended—

(1) by striking out "Any vessel, on being duly registered in pursuance of the laws of the United States," and inserting

"Any United States documented vessel with a registry and coastwise endorsements"; and

(2) by striking out all the text occurring after the first sentence.

(c) CLEARANCE REQUIREMENTS.—Section 4197 of such Revised Statutes (46 U.S.C. App. 91) is amended to read as follows:

"SEC. 4197. CLEARANCE; VESSELS.

"(a) WHEN REQUIRED; VESSELS OF THE UNITED STATES.—Except as otherwise provided by law, any vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States—

"(1) for a foreign port or place;

"(2) for another port or place in the United States if the vessel has on board bonded merchandise or foreign merchandise for which entry has not been made; or

"(3) outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea.

"(b) WHEN REQUIRED; OTHER VESSELS.—Except as otherwise provided by law, any vessel that is not a vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States—

"(1) for a foreign port or place;

"(2) for another port or place in the United States; or

"(3) outside the territorial sea to visit a hovering vessel or to receive or deliver merchandise while outside the territorial sea.

"(c) REGULATIONS.—The Secretary of the Treasury may by regulation—

"(1) prescribe the manner in which clearance under this section is to be obtained, including the documents, data or information which shall be submitted or transmitted, pursuant to an authorized data interchange system, to obtain the clearance;

"(2) permit the Customs Service to grant clearance for a vessel under this section before all requirements for clearance are complied with, but only if the owner or operator of the vessel files a bond in an amount set by the Secretary of the Treasury conditioned upon the compliance by the owner or operator with all specified requirements for clearance within a time period (not exceeding 4 business days) established by the Secretary of the Treasury; and

"(3) authorize the Customs Service to permit clearance of any vessel to be obtained at a place other than a designated port of entry, under such conditions as he may prescribe.".

SEC. 8375. AMENDMENTS TO TITLE 18, UNITED STATES CODE.

Section 965(a) of title 18, United States Code, is amended—

(1) by striking out "sections 91, 92, and 94 of Title 46" and inserting "section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) and section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91),";

(2) by striking out "the collector of customs for the district wherein such vessel is then located" and inserting "the Customs Service"; and

(3) by striking out "the collector like" and inserting in lieu thereof "the Customs Service like".

SEC. 8376. AMENDMENT TO THE ACT TO PREVENT POLLUTION FROM SHIPS.

Section 9(e) of the Act to Prevent Pollution from Ships (94 Stat. 2301, 33 U.S.C. 1908(e)) is amended by striking out "shall refuse or revoke" and all of the text following thereafter and inserting "shall refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.".

SEC. 8377. AMENDMENTS TO THE ACT OF NOVEMBER 6, 1966.

Sections 2(e) and 3(e) of the Act of November 6, 1966 (46 U.S.C. App. 817d(e) and 817e(e)) are each amended—

(1) by striking out "The collector of customs at" and inserting "At"; and

(2) by inserting ", the Customs Service" after "subsection (a) of this section".

SEC. 8378. REPEAL OF OBSOLETE PROVISIONS OF LAW.

(a) REVISED STATUTES.—The following provisions of the Revised Statutes of the United States are repealed:

(1) So much of section 2792 as is codified at 19 U.S.C. 289 and 46 U.S.C. App. 110 and 112 (as in effect on the date of the enactment of this Act).

(2) Section 3111 (19 U.S.C. 282).

(3) Section 3118 (19 U.S.C. 286).

(4) Section 3119 (19 U.S.C. 287).

(5) Section 3122 (19 U.S.C. 290).

(6) Section 3124 (19 U.S.C. 291).

(7) Section 3125 (19 U.S.C. 292).

(8) Section 4198 (46 U.S.C. App. 94).

(9) Section 4199 (46 U.S.C. App. 93).

(10) Section 4201 (46 U.S.C. App. 96).

(11) Section 4207.

(12) Section 4208 (46 U.S.C. App. 102).

(13) Section 4213 (46 U.S.C. App. 101).

(14) So much of section 4221 as is codified at 46 U.S.C. App. 113 (as in effect on the date of the enactment of this Act).

(15) Section 4222 (46 U.S.C. App. 126).

(16) Section 4332 (46 U.S.C. App. 274).

(17) Section 4348 (46 U.S.C. App. 293).

(18) Section 4358 (46 U.S.C. App. 306).

(19) Section 4361 (46 U.S.C. App. 307).

(20) Sections 4362 through 4369 (46 U.S.C. App. 308 through 315).

(21) Sections 4573 through 4576 (46 U.S.C. App. 674 through 677).

(b) TARIFF ACT OF 1930.—The following sections of the Tariff Act of 1930 are repealed:

(1) Section 432 (19 U.S.C. 1432).

(2) Section 435 (19 U.S.C. 1435).

(3) Section 437 (19 U.S.C. 1437).

(4) Section 439 (19 U.S.C. 1439).

(5) Section 440 (19 U.S.C. 1440).

(6) Sections 443, 444, and 445 (19 U.S.C. 1443, 1444, and 1445).

(7) Section 465 (19 U.S.C. 1465).

(8) Section 482 (19 U.S.C. 1482).

(9) Section 583 (19 U.S.C. 1583).

(10) Section 585 (19 U.S.C. 1585).

(c) MISCELLANEOUS PROVISIONS.—The following provisions are repealed:

(1) The last undesignated paragraph of section 201 of the Act of August 5, 1935 (19 U.S.C. 1432a), is repealed.

(2) The Act of June 16, 1937 (19 U.S.C. 1435b).

(3) Section 1 of the Act of July 3, 1926 (46 U.S.C. App. 293a).

(4) The Act of May 4, 1934 (46 U.S.C. App. 91a).

(5) Section 1403(b) of the Water Resources Development Act of 1986 (Public Law 99-662; 26 U.S.C. 4461 note).

SEC. 8379. REPORTS TO CONGRESS.

(a) ANTIDUMPING AND COUNTERVAILING DUTY COLLECTIONS.—The Commissioner of Customs shall before the 60th day of each fiscal year after fiscal year 1992 submit to Congress a report regarding the collection during the preceding fiscal year of duties imposed under the antidumping and countervailing duty laws.

(b) CES FEE REPORT.—

(1) AMENDMENT.—Section 9501(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 3 note) is amended by adding at the end the following new paragraph:

"(3) The Commissioner of Customs is authorized to obtain from the operators of centralized cargo examination stations information regarding the fees paid to them for the provision of services at these stations.".

(2) REPORT.—Within 9 months after the date of the enactment of this subsection, the Commissioner of Customs shall submit to the Committees referred to in section 9501(c) of the Omnibus Budget Reconciliation Act of 1987, a report setting forth—

(A) an estimate of the aggregate amount of fees paid to operators of centralized cargo examination stations during fiscal year 1992; and

(B) the variations, if any, among customs districts with respect to the amounts of the fees charged for centralized cargo examination station services.

(c) COMPLIANCE WITH CUSTOMS LAWS.—Section 123 of the Customs and Trade Act of 1990 (19 U.S.C. 2083) is amended—

(1) by redesignating subsection (d) as subsection (e), and

(2) by inserting after subsection (c) the following:

"(d) COMPLIANCE PROGRAM.—The Commissioner of Customs shall—

"(1) devise and implement a methodology for estimating the level of compliance with the laws administered by the Customs Service; and

"(2) include as an additional part of the report required to be submitted under subsection (a) for each of fiscal years 1993,

1994, and 1995, an evaluation of the extent to which such compliance was obtained during the 12-month period preceding the 60th day before each such fiscal year.".

(d) COURIER SERVICES COMPLIANCE REPORT.—The Commissioner of Customs shall initiate a compliance review of certain courier services which may not be eligible for benefits under the regulations of the Customs Service prescribed in part 128 of title 19 of the Code of Federal Regulations and shall submit a report to Congress on the results of such review within 1 year after the date of the enactment of this Act.

SEC. 8380. APPLICABILITY OF AMENDMENTS TO ENTRY OR WITHDRAWAL OF GOODS.

Any amendment made by this subtitle that is applicable to the entry, or withdrawal from warehouse for consumption, of goods applies to any such entry or withdrawal that is made on or after the 15th day after the date of the enactment of this Act.

Subtitle D—Customs Officer Pay Reform

SEC. 8401. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

(a) IN GENERAL.—Section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267) is amended to read as follows:

"SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

"(a) OVERTIME PAY.—

"(1) IN GENERAL.—Subject to paragraph (2) and subsection (c), a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the officer. For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b).

"(2) SPECIAL PROVISIONS RELATING TO OVERTIME WORK ON CALLBACK BASIS.—

"(A) MINIMUM DURATION.—Any work for which compensation is authorized under paragraph (1) and for which the customs officer is required to return to the officer's place of work shall be treated as being not less than 2 hours in duration; but only if such work begins at least 1 hour after the end of any previous regularly scheduled work assignment and ends at least 1 hour before the beginning of the following regularly scheduled work assignment.

"(B) COMPENSATION FOR COMMUTING TIME.—

"(i) IN GENERAL.—Except as provided in clause (ii), in addition to the compensation authorized under paragraph (1) for work to which subparagraph (A) applies, the customs officer is entitled to be paid, as compensation for commuting time, an amount equal to 3 times the hourly rate of basic pay of the officer.

"(ii) EXCEPTION.—Compensation for commuting time is not payable under clause (i) if the work

for which compensation is authorized under paragraph (1)—

"(I) does not commence within 16 hours of the customs officer's last regularly scheduled work assignment, or

"(II) commences within 2 hours of the next regularly scheduled work assignment of the customs officer.

"(b) PREMIUM PAY FOR CUSTOMS OFFICERS.—

"(1) NIGHT WORK DIFFERENTIAL.—

"(A) 3 P.M. TO MIDNIGHT SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occur during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

"(B) 11 P.M. TO 8 A.M. SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occur during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

"(C) 7:30 P.M. TO 3:30 A.M. SHIFTWORK.—If the regularly scheduled work assignment of a customs officer is 7:30 p.m. to 3:30 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate for the period from 7:30 p.m. to 11:30 p.m. and at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate for the period from 11:30 p.m. to 3:30 a.m.

"(2) SUNDAY DIFFERENTIAL.—A customs officer who performs any regularly scheduled work on a Sunday that is not a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 50 percent of that basic rate.

"(3) HOLIDAY DIFFERENTIAL.—A customs officer who performs any regularly scheduled work on a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 100 percent of that basic rate.

"(4) TREATMENT OF PREMIUM PAY.—Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose.

"(c) LIMITATIONS.—

"(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) and premium pay under subsection (b) that a customs officer may be paid in any fiscal year may not exceed $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to

prevent excessive costs or to meet emergency requirements of the Customs Service.

"(2) EXCLUSIVITY OF PAY UNDER THIS SECTION.—A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) for time worked may not receive pay or other compensation for that work under any other provision of law.

"(d) REGULATIONS.—The Secretary of the Treasury shall prescribe such regulations as are necessary or appropriate to carry out this section, including regulations—

"(1) to ensure that callback work assignments are commensurate with the overtime pay authorized for such work; and

"(2) to prevent the disproportionate assignment of overtime work to customs officers who are near to retirement.

"(e) DEFINITIONS.—As used in this section:

"(1) The term 'customs officer' means an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Such functions shall be consistent with such applicable standards as may be promulgated by the Office of Personnel Management.

"(2) The term 'holiday' means any day designated as a holiday under a Federal statute or Executive order.".

(b) CONFORMING AMENDMENTS.—

(1) Section 2 of the Act of June 3, 1944 (19 U.S.C. 1451a), is repealed.

(2) Section 450 of the Tariff Act of 1930 (19 U.S.C. 1450) is amended—

(A) by striking out "AT NIGHT" in the section heading and inserting "DURING OVERTIME HOURS";

(B) by striking out "at night" and inserting "during overtime hours"; and

(C) by inserting "aircraft," immediately before "vessel".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) apply to customs inspectional services provided on or after October 1, 1992.

SEC. 8402. FOREIGN LANGUAGE PROFICIENCY AWARDS FOR CUSTOMS OFFICERS.

Cash awards for foreign language proficiency may, under regulations prescribed by the Secretary of the Treasury, be paid to customs officers (as referred to in section 5(e)(1) of the Act of February 13, 1911) to the same extent and in the same manner as would be allowable under subchapter III of chapter 45 of title 5, United States Code, with respect to law enforcement officers (as defined by section 4521 of such title).

SEC. 8403. APPROPRIATIONS REIMBURSEMENTS FROM THE CUSTOMS USER FEE ACCOUNT.

Section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) is amended—

(1) by amending clause (i) of subparagraph (A) to read as follows:

"(i) in—

"(I) paying overtime compensation and premium pay under section 5(a) and (b) of the Act of February 13, 1911,

"(II) paying agency contributions to the Civil Service Retirement and Disability Fund to match deductions from the overtime compensation paid under subclause (I), and

"(III) providing all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and"; and

(2) by striking out "except for costs described in subparagraph (A)(i)(I) and (II)," in subparagraph (B)(i).

SEC. 8404. TREATMENT OF CERTAIN PAY OF CUSTOMS OFFICERS FOR RETIREMENT PURPOSES.

(a) IN GENERAL.—Section 8331(3) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (C);

(2) by striking out the semicolon at the end of subparagraph (D) and inserting "; and";

(3) by adding after subparagraph (D) the following:

"(E) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved;"; and

(4) by striking out "subparagraphs (B), (C), and (D) of this paragraph," and inserting "subparagraphs (B), (C), (D), and (E) of this paragraph".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the date of the enactment of this Act and apply only with respect to service performed on or after such date.

SEC. 8405. REPORTS.

(a) CUSTOMS USER FEE ACCOUNT REPORTS.—Subparagraph (D) of section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)(D)) is amended to read as follows:

"(D) At the close of each fiscal year, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives—

"(i) containing a detailed accounting of all expenditures from the Customs User Fee Account during such year, including a summary of the expenditures, on a port-by-port basis, for which reimbursement has been provided under subparagraph (A)(ii);

"(ii) containing a listing of all callback assignments of customs officers for which overtime compensation was paid under section 5(a) of the Act of February 13, 1911, and that were less than 1 hour in duration; and

"(iii) containing a listing of all customs officers who were paid $25,000 or more under subsections 5(a) and 5(b) of the Act of February 13, 1911, including a listing of the total compensa-

tion paid to each of those customs officers under all other statutory authority.".

(b) OTHER REPORTS.—

(1) GAO REPORT.—The Comptroller General of the United States shall undertake—

(A) an evaluation of the appropriateness and efficiency of the customs user fee laws for financing the provision of customs inspectional services; and

(B) a study to determine whether cost savings in the provision of overtime inspectional services could be realized by the United States Customs Service through the use of additional inspectors as opposed to continuing the current practice of relying on overtime pay.

The Comptroller General shall submit a report on the evaluation and study required under this subsection to the Committees by no later than the 1st anniversary of the date of the enactment of this Act.

(2) TREASURY RECOMMENDATION.—On the day that the President submits the budget for the United States Government for fiscal year 1994 to the Congress under section 1105(a) of title 31, United States Code, the Secretary of the Treasury shall submit to the Committees recommended legislative proposals for improving the operation of customs user fee laws in financing the provision of customs inspectional services.

(3) DEFINITION OF COMMITTEES.—For purposes of this subsection, the term "Committees" means the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

Subtitle E—Miscellaneous Trade Provisions

SEC. 8501. REVIEW OF THE COMPLIANCE BY FOREIGN COUNTRIES WITH BILATERAL TRADE AGREEMENTS.

(a) AMENDMENT TO TITLE III.—Chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq.) is amended by inserting after section 306 the following new section:

"SEC. 306A. REQUESTS FOR REVIEW OF FOREIGN COMPLIANCE.

"(a) DEFINITIONS.—For purposes of this section—

"(1) The term 'interested person' means any person that has a significant and direct economic interest that is being, or has been, adversely affected by the failure of a foreign country to comply materially with the terms of a trade agreement.

"(2) The term 'trade agreement' means any bilateral trade agreement to which the United States is a party; except—

"(A) the United States-Canada Free-Trade Agreement entered into on January 2, 1988, and

"(B) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel entered into on April 22, 1985.

"(b) REQUEST FOR REVIEW.—

"(1) An interested person may request the Trade Representative to undertake a review under this section to determine

whether a foreign country is in material compliance with the terms of a trade agreement.

"(2) A request for the review of a trade agreement under this section may be made only during—

"(A) the 30-day period beginning on each anniversary of the effective date of the trade agreement; and

"(B) the 30-day period ending on the 90th day before the termination date of the trade agreement, if the first day of such 30-day period occurs not less than 180 days after the last occurring 30-day period referred to in subparagraph (A).

"(3) The Trade Representative shall commence a review under this section if the request—

"(A) is in writing;

"(B) includes information reasonably available to the petitioner regarding the failure of the foreign country to comply with the trade agreement;

"(C) identifies the economic interest of the petitioner that is being adversely affected by the failure referred to in subparagraph (B); and

"(D) describes the extent of the adverse effect.

"(4) If 2 or more requests are filed during any period described in paragraph (2) regarding the same trade agreement, all of such requests shall be joined in a single review of the trade agreement.

"(c) REVIEW.—

"(1) If 1 or more requests regarding any trade agreement are received during any period described in subsection (b)(2), then within 90 days after the last day of such period the Trade Representative shall determine whether the foreign country is in material compliance with the terms of the trade agreement.

"(2) In making a determination under paragraph (1), the Trade Representative shall take into account—

"(A) the extent to which the foreign country has adhered to the commitments it made to the United States;

"(B) the extent to which that degree of adherence has achieved the objectives of the agreement; and

"(C) any act, policy, or practice of the foreign country, or other relevant factor, that may have contributed directly or indirectly to material noncompliance with the terms of the agreement.

The acts, policies, or practices referred to in subparagraph (C) may include structural policies, tariff or nontariff barriers, or other actions which affect compliance with the terms of the agreement.

"(3) In conducting any review under paragraph (1), the Trade Representative may, if the Trade Representative considers such action necessary or appropriate—

"(A) consult with the Secretary of Commerce and the Secretary of Agriculture;

"(B) seek the advice of the United States International Trade Commission; and

"(C) provide opportunity for the presentation of views by the public.

"(d) ACTION AFTER AFFIRMATIVE DETERMINATION.—

"(1) If, on the basis of the review carried out under subsection (c), the Trade Representative determines that a foreign country is not in material compliance with the terms of a trade agreement, the Trade Representative shall determine what action to take under section 301(a).

"(2) For purposes of section 301, any determination made under subsection (c) shall be treated as a determination made under section 304.

"(3) In determining what action to take under section 301(a), the Trade Representative shall seek to minimize the adverse impact on existing business relations or economic interests of United States persons, including products for which a significant volume of trade does not currently exist.

"(e) INTERNATIONAL OBLIGATIONS.—Nothing in this section may be construed as requiring actions that are inconsistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.".

(b) CONFORMING AMENDMENTS.—

(1) CONGRESSIONAL NOTIFICATION.—Section 309(3)(A) of the Trade Act of 1974 (19 U.S.C. 2419(3)(A)) is amended by striking out "section 302," and inserting "sections 302 and 306A(c),".

(2) TABLE OF CONTENTS.—The table of contents of the Trade Act of 1974 relating to chapter 1 of title III is amended by inserting after the item relating to section 306 the following:

"Sec. 306A. Requests for review of foreign compliance.".

SEC. 8502. TREATMENT OF FOOTWEAR.

U.S. Note 2 to subchapter II of chapter 98 of the Harmonized Tariff Schedule of the United States is amended—

(1) by inserting "footwear not accorded duty-free treatment under paragraph (c)," after "apparel article,"; and

(2) by striking out the last sentence and inserting the following:

"(c)(i) No article of footwear may be treated as a foreign article, or as subject to duty, if—

"(A) the requirements of paragraph (b)(i) and (ii) are complied with with respect to the article;

"(B) the article is produced by an existing footwear manufacturer; and

"(C) the article is entered on or after January 1 of any calendar year after 1992 and before the aggregate quantity of footwear produced by that manufacturer and entered during that year equals the annual duty-free footwear amount for that manufacturer.

"(ii) For purposes of this paragraph—

"(A) the term 'annual duty-free footwear amount' for an existing footwear manufacturer means—

"(I) for articles of footwear (other than footwear described in (II)) provided for under any subheading classification, an amount equal to the average monthly quantity of footwear provided for under such classification that was produced during the period January 1, 1992, through October 1, 1992, by all existing manufacturing facilities of such

manufacturer for export to the United States, multiplied by 12; and

"(II) for articles of footwear classified under subheadings 6404.11.50, 6404.11.60, 6404.19.40, and 6404.19.60 and articles of leather footwear (for women) with synthetic soles classified under the appropriate subheadings of heading 6403, an amount equal to the annual production capacity, as of October 1, 1992, of all existing manufacturing facilities of the manufacturer for such classifications of footwear, plus any increase in the production capacity for such classifications of footwear that will result from any new footwear manufacturing facility construction by the manufacturer in one or more beneficiary countries if such construction was in progress on October 1, 1992.

"(B) the term 'existing footwear manufacturer' means a person that established at least 1 existing manufacturing facility; and

"(C) the term 'existing manufacturing facility' means a footwear manufacturing facility that was operating in a beneficiary country on October 1, 1992.

"(iii) The United States International Trade Commission shall—

"(A) identify each existing footwear manufacturer,

"(B) identify, if applicable, any new construction described in (ii)(A)(II) by such manufacturer, and

"(C) determine the annual duty-free footwear amount for each applicable footwear subheading classification for each such manufacturer,

and provide such identification and determination to the Secretary of the Treasury.

"(iv) The Secretary of the Treasury shall by regulation specify such relevant entry information as may be required for purposes of implementing this paragraph.

"(d) For purposes of paragraphs (b) and (c), the term 'beneficiary country' means a country listed in general note 3(c)(v)(A).".

TITLE IX—INCOME SECURITY AND HUMAN RESOURCE AMENDMENTS

Subtitle A—Amendments Relating to Old-Age, Survivors, and Disability Insurance Program

SEC. 9001. IMPROVEMENT AND CLARIFICATION OF PROVISIONS PROHIBITING MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECURITY PROGRAMS AND AGENCIES.

(a) PROHIBITION OF UNAUTHORIZED REPRODUCTION, REPRINTING, OR DISTRIBUTION FOR FEE OF CERTAIN OFFICIAL PUBLICATIONS.—Section 1140(a) of the Social Security Act (42 U.S.C. 1320b-10(a)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting "(1)" after "(a)"; and

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

"(2) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Social Security Administration unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Secretary shall prescribe.".

(b) Addition to Prohibited Words, Letters, Symbols, and Emblems.—Paragraph (1) of section 1140(a) of such Act (as redesignated by subsection (a)) is further amended—

(1) in subparagraph (A) (as redesignated), by striking "Administration', the letters 'SSA' or 'HCFA'," and inserting "Administration', 'Department of Health and Human Services', 'Health and Human Services', 'Supplemental Security Income Program', or 'Medicaid', the letters 'SSA', 'HCFA', 'DHHS', 'HHS', or 'SSI',"; and

(2) in subparagraph (B) (as redesignated), by striking "Social Security Administration" each place it appears and inserting "Social Security Administration, Health Care Financing Administration, or Department of Health and Human Services", and by striking "or of the Health Care Financing Administration".

(c) Exemption for Use of Words, Letters, Symbols, and Emblems of State and Local Government Agencies by Such Agencies.—Paragraph (1) of section 1140(a) of such Act (as redesignated by subsection (a)) is further amended by adding at the end the following new sentence: "The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.".

(d) Inclusion of Reasonableness Standard.—Section 1140(a)(1) of such Act (as amended by the preceding provisions of this section) is further amended, in the matter following subparagraph (B) (as redesignated), by striking "convey" and inserting "convey, or in a manner which reasonably could be interpreted or construed as conveying,".

(e) Ineffectiveness of Disclaimers.—Subsection (a) of section 1140 of such Act (as amended by the preceding provisions of this section) is further amended by adding at the end the following new paragraph:

"(3) Any determination of whether the use of one or more words, letters, symbols, or emblems (or any combination or variation thereof) in connection with an item described in paragraph (1) or the reproduction, reprinting, or distribution of an item described in paragraph (2) is a violation of this subsection shall be made without regard to any inclusion in such item (or any so reproduced, reprinted, or distributed copy thereof) of a disclaimer of affiliation with the United States Government or any particular agency or instrumentality thereof.".

(f) Violations with Respect to Individual Items.—Section 1140(b)(1) of such Act (42 U.S.C. 1320b–10(b)(1)) is amended by

adding at the end the following new sentence: "In the case of any items referred to in subsection (a)(1) consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection (a) shall represent a separate violation. In the case of any item referred to in subsection (a)(2), the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.".

(g) ELIMINATION OF CAP ON AGGREGATE LIABILITY AMOUNT.—

(1) REPEAL.—Paragraph (2) of section 1140(b) of such Act (42 U.S.C. 1320b–10(b)(2)) is repealed.

(2) CONFORMING AMENDMENTS.—Section 1140(b) of such Act is further amended—

(A) by striking "(1) Subject to paragraph (2), the" and inserting "The";

(B) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(C) in paragraph (1) (as redesignated), by striking "subparagraph (B)" and inserting "paragraph (2)".

(h) REMOVAL OF FORMAL DECLINATION REQUIREMENT.—Section 1140(c)(1) of such Act (42 U.S.C. 1320b–10(c)(1)) is amended by inserting "and the first sentence of subsection (c)" after "and (i)".

(i) PENALTIES RELATING TO SOCIAL SECURITY ADMINISTRATION DEPOSITED IN OASI TRUST FUND.—Section 1140(c)(2) of such Act (42 U.S.C. 1320b–10(c)(2)) is amended in the second sentence by striking "United States." and inserting "United States, except that, to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Adminstration, such amounts shall be deposited into the Federal Old-Age and Survivor's Insurance Trust Fund.".

(j) ANNUAL REPORTS.—Section 1140 of such Act (42 U.S.C. 1320b–10) is amended by adding at the end the following new subsection:

"(d) The Secretary shall include in the annual report submitted pursuant to section 704 a report on the operation of this section during the year covered by such annual report. Such report shall specify—

"(1) the number of complaints of violations of this section received by the Social Security Administration during the year,

"(2) the number of cases in which a notice of violation of this section was sent by the Social Security Administration during the year requesting that an individual cease activities in violation of this section,

"(3) the number of complaints of violations of this section referred by the Social Security Administration to the Inspector General in the Department of Health and Human Services during the year,

"(4) the number of investigations of violations of this section undertaken by the Inspector General during the year,

"(5) the number of cases in which a demand letter was sent during the year assessing a civil money penalty under this section,

"(6) the total amount of civil money penalties assessed under this section during the year,

"(7) the number of requests for hearings filed during the year pursuant to sections 1140(c)(1) and 1128A(c)(2),

"(8) the disposition during such year of hearings filed pursuant to sections 1140(c)(1) and 1128A(c)(2), and

"(9) the total amount of civil money penalties under this section deposited into the Federal Old-Age and Survivors Insurance Trust Fund during the year.".

(k) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations occurring after the date of the enactment of this Act.

SEC. 9002. EXPLICIT REQUIREMENTS FOR MAINTENANCE OF TELEPHONE ACCESS TO LOCAL OFFICES OF THE SOCIAL SECURITY ADMINISTRATION.

(a) MAINTENANCE OF SERVICE TO LOCAL OFFICES.—

(1) IN GENERAL.—Section 5110(a) of the Omnibus Budget Reconciliation Act of 1990 (104 Stat. 1388-272) is amended by adding at the end the following new sentences: "In carrying out the requirements of the preceding sentence, the Secretary shall reestablish and maintain in service at least the same number of telephone lines to each such local office as was in place as of such date, including telephone sets for connections to such lines.".

(2) EFFECTIVE DATE.—The Secretary of Health and Human Services shall ensure that the requirements of the amendment made by paragraph (1) are carried out no later than March 1, 1993.

(b) MAINTENANCE OF TOLL-FREE TELEPHONE NUMBER SERVICE.—The Secretary of Health and Human Services shall ensure that toll-free telephone service provided by the Social Security Administration is maintained at a level which is at least equal to that in effect on the date of the enactment of this Act.

SEC. 9003. USE OF SOCIAL SECURITY NUMBERS BY STATES AND LOCAL GOVERNMENTS FOR JURY SELECTION PURPOSES.

(a) IN GENERAL.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 405(c)(2)) is amended—

(1) in subparagraph (B)(i), by striking "(E)" in the matter preceding subclause (I) and inserting "(F)";

(2) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(3) by inserting after subparagraph (D) the following:

"(E)(i) It is the policy of the United States that any State (or any political subdivision of a State) may utilize the social security account numbers issued by the Secretary for the additional purposes described in clause (ii) if such numbers have been collected and are otherwise utilized by such State (or political subdivision) in accordance with applicable law.

"(ii) The additional purposes described in this clause are the following:

"(I) identifying duplicate names of individuals on master lists used for jury selection purposes, and

"(II) identifying on such master lists those individuals who are ineligible to serve on a jury by reason of their conviction of a felony.

"(iii) To the extent that any provision of Federal law enacted before the date of the enactment of this subparagraph is inconsistent with the policy set forth in clause (i), such provision shall, on and after that date, be null, void, and of no effect.

"(iv) For purposes of this subparagraph, the term 'State' has the meaning such term has in subparagraph (D).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 9004. AUTHORIZATION FOR ALL STATES TO EXTEND COVERAGE TO STATE AND LOCAL POLICEMEN AND FIREMEN UNDER EXISTING COVERAGE AGREEMENTS.

(a) IN GENERAL.—Section 218(l) of the Social Security Act (42 U.S.C. 418(l)) is amended—

(1) in paragraph (1), by striking "(1)" after "(l)", and by striking "the State of" and all that follows through "date of the enactment of this subsection" and inserting "a State entered into pursuant to this section"; and

(2) by striking paragraph (2).

(b) CONFORMING AMENDMENT.—Section 218(d)(8)(D) of such Act (42 U.S.C. 418(d)(8)(D)) is amended by striking "agreements with States named in" and inserting "State agreements modified as provided in".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to modifications filed by States after the date of the enactment of this Act.

SEC. 9005. LIMITED EXEMPTION FOR CANADIAN MINISTERS FROM CERTAIN SELF-EMPLOYMENT TAX LIABILITY.

(a) IN GENERAL.—Notwithstanding any other provision of law, if—

(1) an individual performed services described in section 1402(c)(4) of the Internal Revenue Code of 1986 which are subject to tax under section 1401 of such Code,

(2) such services were performed in Canada at a time when no agreement between the United States and Canada pursuant to section 233 of the Social Security Act was in effect, and

(3) such individual was required to pay contributions on the earnings from such services under the social insurance system of Canada,

then such individual may file a certificate under this section in such form and manner, and with such official, as may be prescribed in regulations issued under chapter 2 of such Code. Upon the filing of such certificate, notwithstanding any judgment which has been entered to the contrary, such individual shall be exempt from payment of such tax and from any penalties or interest for failure to pay such tax or to file a self-employment tax return as required under section 6017 of such Code.

(b) PERIOD FOR FILING.—A certificate referred to in subsection (a) may be filed only during the 180-day period commencing with the date on which the regulations referred to in subsection (a) are issued.

(c) TAXABLE YEARS AFFECTED BY CERTIFICATE.—A certificate referred to in subsection (a) shall be effective for taxable years ending after December 31, 1978, and before January 1, 1985.

(d) RESTRICTION ON CREDITING OF EXEMPT SELF-EMPLOYMENT INCOME.—In any case in which an individual is exempt under this section from paying a tax imposed under section 1401 of the Internal Revenue Code of 1986, any income on which such tax would have been imposed but for such exemption shall not constitute self-employment income under section 211(b) of the Social Security Act, and, if such individual's primary insurance amount has been determined under section 215 of such Act, notwithstanding section 215(f)(1) of such Act, the Secretary of Health and Human Services shall recompute such primary insurance amount so as to take into account the provisions of this subsection.

SEC. 9006. ELIMINATION OF ROUNDING DISTORTION IN THE CALCULATION OF THE OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE CONTRIBUTION AND BENEFIT BASE AND THE EARNINGS TEST EXEMPT AMOUNTS.

(a) ADJUSTMENT OF OASDI CONTRIBUTION AND BENEFIT BASE.—

(1) IN GENERAL.—Section 230(b) of the Social Security Act (42 U.S.C. 430(b)) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) $55,500, and

"(2) the ratio of (A) the deemed average total wages (as defined in section 209(k)(1)) for the calendar year before the calendar year in which the determination under subsection (a) is made to (B) the deemed average total wages (as so defined) for 1990,".

(2) CONFORMING AMENDMENT RELATING TO APPLICABLE PRIOR LAW.—Section 230(d) of such Act (42 U.S.C. 430(d)) is amended by striking "(except that" and all that follows through the end and inserting "(except that, for purposes of subsection (b) of such section 230 as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $41,400, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the deemed average total wages (as defined in section 209(k)(1)), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 230 is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1990).".

(3) ADJUSTMENT OF CONTRIBUTION AND BENEFIT BASE APPLICABLE IN DETERMINING YEARS OF COVERAGE FOR PURPOSES OF SPECIAL MINIMUM PRIMARY INSURANCE AMOUNT.—Section 215(a)(1)(C)(ii) of such Act is amended by striking "(except that" and all that follows through the end and inserting "(except that, for purposes of subsection (b) of such section 230 as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to

an amount equal to $41,400, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the deemed average total wages (as defined in section 209(k)(1)), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 230 is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1990).".

(b) ADJUSTMENT OF EARNINGS TEST EXEMPT AMOUNT.—Section 203(f)(8)(B)(ii) of the Social Security Act (42 U.S.C. 403(f)(8)(B)(ii)) is amended to read as follows:

"(ii) the product of the corresponding exempt amount which is in effect with respect to months in the taxable year ending after 1991 and before 1993, and the ratio of—

"(I) the deemed average total wages (as defined in section 209(k)(1)) for the calendar year before the calendar year in which the determination under subparagraph (A) is made, to

"(II) the deemed average total wages (as so defined) for 1990,

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.".

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall be effective with respect to the determination of the contribution and benefit base for years after 1992.

(2) The amendment made by subsection (b) shall be effective with respect to the determination of the exempt amounts applicable to any taxable year ending after 1992.

SEC. 9007. REPEAL OF THE FACILITY-OF-PAYMENT PROVISION.

(a) REPEAL OF RULE PRECLUDING REDISTRIBUTION UNDER FAMILY MAXIMUM.—Section 203(i) of the Social Security Act (42 U.S.C. 403(i)) is repealed.

(b) COORDINATION UNDER FAMILY MAXIMUM OF REDUCTION IN BENEFICIARY'S AUXILIARY BENEFITS WITH SUSPENSION OF AUXILIARY BENEFITS OF OTHER BENEFICIARY UNDER EARNINGS TEST.—Section 203(a)(4) of such Act (42 U.S.C. 403(a)(4)) is amended by striking "section 222(b). Whenever" and inserting the following: "section 222(b). Notwithstanding the preceding sentence, any reduction under this subsection in the case of an individual who is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 202 for any month on the basis of the same wages and self-employment income as another person—

"(A) who also is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 202 for such month,

"(B) who does not live in the same household as such individual, and

"(C) whose benefit for such month is suspended (in whole or in part) pursuant to subsection (h)(3) of this section,

shall be made before the suspension under subsection (h)(3). Whenever".

(c) CONFORMING AMENDMENT APPLYING EARNINGS REPORTING REQUIREMENT DESPITE SUSPENSION OF BENEFITS.—The third sentence of section 203(h)(1)(A) of such Act (42 U.S.C. 403(h)(1)(A)) is amended by striking "Such report need not be made" and all that follows through "The Secretary may grant" and inserting the following: "Such report need not be made for any taxable year—

"(i) beginning with or after the month in which such individual attained age 70, or

"(ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection, unless—

"(I) such individual is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 202,

"(II) such benefits are reduced under subsection (a) of this section for any month in such taxable year, and

"(III) in any such month there is another person who also is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 202 on the basis of the same wages and self-employment income and who does not live in the same household as such individual.

The Secretary may grant".

(d) CONFORMING AMENDMENT DELETING SPECIAL INCOME TAX TREATMENT OF BENEFITS NO LONGER REQUIRED BY REASON OF REPEAL.—Section 86(d)(1) of the Internal Revenue Code of 1986 (relating to income tax on social security benefits) is amended by striking the last sentence.

(e) EFFECTIVE DATES.—

(1) The amendments made by subsections (a), (b), and (c) shall apply with respect to benefits payable for months after December 1993.

(2) The amendment made by subsection (d) shall apply with respect to benefits received after December 31, 1993, in taxable years ending after such date.

SEC. 9008. AUTHORIZATION FOR DISCLOSURE BY THE SECRETARY OF HEALTH AND HUMAN SERVICES OF INFORMATION FOR PURPOSES OF PUBLIC OR PRIVATE EPIDEMIOLOGICAL AND SIMILAR RESEARCH.

(a) IN GENERAL.—Section 1106 of the Social Security Act (42 U.S.C. 1306) is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(2) in subsection (f) (as so redesignated), by striking "subsection (d)" and inserting "subsection (e)"; and

(3) by inserting after subsection (c) the following new subsection:

"(d) Notwithstanding any other provision of this section, in any case in which—

"(1) information regarding whether an individual is shown on the records of the Secretary as being alive or deceased is requested from the Secretary for purposes of epidemiological or

similar research which the Secretary finds may reasonably be expected to contribute to a national health interest, and

"(2) the requester agrees to reimburse the Secretary for providing such information and to comply with limitations on safeguarding and rerelease or redisclosure of such information as may be specified by the Secretary,

the Secretary shall comply with such request, except to the extent that compliance with such request would constitute a violation of the terms of any contract entered into under section 205(r).".

(b) AVAILABILITY OF INFORMATION RETURNS REGARDING WAGES PAID EMPLOYEES.—Section 6103(l)(5) of the Internal Revenue Code of 1986 (relating to disclosure of returns and return information to the Department of Health and Human Services for purposes other than tax administration) is amended—

(1) by striking "for the purpose of" and inserting "for the purpose of—";

(2) by striking "carrying out, in accordance with an agreement" and inserting the following:

"(A) carrying out, in accordance with an agreement";

(3) by striking "program." and inserting "program; or"; and

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

"(B) providing information regarding the mortality status of individuals for epidemiological and similar research in accordance with section 1106(d) of the Social Security Act.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to requests for information made after the date of the enactment of this Act.

SEC. 9009. COMPARABLE SEVERITY DISABILITY FOR CHILDREN UNDER DISABILITY INSURANCE PROGRAM.

(a) IN GENERAL.—Section 223(d)(1)(A) of the Social Security Act (42 U.S.C. 423(d)(1)(A)) is amended by inserting before the semicolon the following: "(or, in the case of a child under the age of 18, if such child suffers from any medically determinable physical or mental impairment of comparable severity)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to determinations made on or after the date of the enactment of this Act.

SEC. 9010. INCREASED PENALTIES FOR UNAUTHORIZED DISCLOSURE OF SOCIAL SECURITY INFORMATION.

(a) IN GENERAL.—

(1) UNAUTHORIZED DISCLOSURE.—Section 1106(a) of the Social Security Act (42 U.S.C. 1306(a)) is amended—

(A) by striking "misdemeanor" and inserting "felony";

(B) by striking "$1,000" and inserting "$10,000 for each occurrence of a violation"; and

(C) by striking "one year" and inserting "5 years".

(2) UNAUTHORIZED DISCLOSURE BY FRAUD.—Section 1107(b) of such Act (42 U.S.C. 1307(b)) is amended—

(A) by inserting "social security account number," after "information as to the";

(B) by striking "misdemeanor" and inserting "felony";

(C) by striking "$1,000" and inserting "$10,000 for each occurrence of a violation"; and

(D) by striking "one year" and inserting "5 years".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to violations occurring on or after the date of the enactment of this Act.

SEC. 9011. INCREASE IN AUTHORIZED PERIOD FOR EXTENSION OF TIME TO FILE ANNUAL EARNINGS REPORT.

(a) IN GENERAL.—Section 203(h)(1)(A) of the Social Security Act (42 U.S.C. 403(h)(1)(A)) is amended in the last sentence by striking "three months" and inserting "four months".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to reports of earnings for taxable years ending on or after December 31, 1992.

SEC. 9012. AMENDMENTS RELATED TO REPRESENTATIVE PAYEES.

(a) DISQUALIFICATION OF CERTAIN CONVICTED FELONS AS REPRESENTATIVE PAYEES.—

(1) IN GENERAL.—Section 1631(a)(2)(B)(iii) of the Social Security Act (42 U.S.C. 1383(a)(2)(B)(iii)) is amended—

(A) by striking "or" at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting "; or"; and

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

"(IV) such person is applying on behalf of a drug addict or alcoholic (within the meaning of section 1611(e)(3)(A)) and has been convicted of—

"(aa) a drug-related offense, as defined in regulations of the Secretary;

"(bb) a crime classified as a felony under State or Federal law; or

"(cc) in the case of a State which does not classify any crime as a felony, a crime which is punishable by imprisonment for more than 1 year or death.".

(2) AUTHORITY OF SECRETARY TO GRANT EXEMPTIONS.—Section 1631(a)(2)(B)(iv) of such Act (42 U.S.C. 1383(a)(2)(B)(iv)) is amended by striking "clause (iii)(II)" and inserting "subclause (II) or (IV) of clause (iii)".

(c) EXCEPTION FOR CREDITORS WHO PROVIDE TREATMENT FOR SUBSTANCE ABUSE.—

(1) AMENDMENTS RELATING TO OASDI PROGRAM.—Section 205(j)(2)(C) of such Act (42 U.S.C. 405(j)(2)(C)) is amended—

(A) in clause (iii)—

(i) by striking "or" at the end of subclause (IV);

(ii) by redesignating subclause (V) as subclause (VI); and

(iii) by inserting after subclause (IV) the following new subclause:

"(V) a facility that is licensed or certified for the treatment of drug or alcohol abuse under the law of a State or a political subdivision of a State, or"; and

(B) in clause (iv), by striking "clause (iii)(V)" and inserting "clause (iii)(VI)".

(2) AMENDMENTS TO SSI PROGRAM.—Section 1631(a)(2)(B) of such Act (42 U.S.C. 1383(a)(2)(B)) is amended—

(A) in clause (v)—

(i) by striking "or" at the end of subclause (IV);

(ii) by redesignating subclause (V) as subclause (VI); and

(iii) by inserting after subclause (IV) the following new subclause:

"(V) a facility that is licensed or certified for the treatment of drug or alcohol abuse under the law of a State or a political subdivision of a State; or"; and

(B) in clause (vi), by striking "clause (iii)(V)" and inserting "clause (iii)(VI)".

(d) REGULATIONS.—The Secretary of Health and Human Services shall issue regulations necessary to carry out the amendments made by this section not later than 180 days after the date of the enactment of this Act.

SEC. 9013. TECHNICAL CORRECTIONS RELATED TO OASDI IN THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990.

(a) AMENDMENTS RELATED TO PROVISIONS IN SECTION 5103(b) RELATING TO DISABLED WIDOWS.—Section 223(f)(2) of the Social Security Act (42 U.S.C. 423(f)(2)) is amended—

(1) in subparagraph (A), by striking "(in a case to which clause (ii)(II) does not apply)"; and

(2) by striking subparagraph (B)(ii) and inserting the following:

"(ii) the individual is now able to engage in substantial gainful activity; or".

(b) AMENDMENTS RELATED TO PROVISIONS IN SECTION 5105(d) RELATING TO REPRESENTATIVE PAYEES.—Section 5105(d)(1)(A) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended—

(1) by striking "Section 205(j)(5)" and inserting "Section 205(j)(6)"; and

(2) by redesignating the paragraph (5) as amended thereby as paragraph (6).

(c) AMENDMENTS RELATED TO PROVISIONS IN SECTION 5106 RELATING TO COORDINATION OF RULES UNDER TITLES II AND XVI GOVERNING FEES FOR REPRESENTATIVES OF CLAIMANTS WITH ENTITLEMENTS UNDER BOTH TITLES.—

(1) CALCULATION OF FEE OF CLAIMANT'S REPRESENTATIVE BASED ON AMOUNT OF PAST-DUE SUPPLEMENTAL SECURITY INCOME BENEFITS AFTER APPLICATION OF WINDFALL OFFSET PROVISION.—Section 1631(d)(2)(A)(i) of the Social Security Act (as amended by section 5106(a)(2) of the Omnibus Budget Reconciliation Act of 1990) (42 U.S.C. 1383(d)(2)(A)(i)) is amended to read as follows:

"(i) by substituting, in subparagraphs (A)(ii)(I) and (C)(i), the phrase '(as determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a))' for the parenthetical phrase contained therein; and".

(2) CALCULATION OF PAST-DUE BENEFITS FOR PURPOSES OF DETERMINING ATTORNEY FEES IN JUDICIAL PROCEEDINGS.—

(A) IN GENERAL.—Section 206(b)(1) of such Act (42 U.S.C. 406(b)(1)) is amended—

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

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

"(B) For purposes of this paragraph—

"(i) the term 'past-due benefits' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 223, and

"(ii) amounts of past-due benefits shall be taken into account to the extent provided under the rules applicable in cases before the Secretary.".

(B) PROTECTION FROM OFFSETTING SSI BENEFITS.—The last sentence of section 1127(a) of such Act (as added by section 5106(b) of the Omnibus Budget Reconciliation Act of 1990) (42 U.S.C. 1320a-6(a)) is amended by striking "section 206(a)(4)" and inserting "subsection (a)(4) or (b) of section 206".

(3) APPLICATION OF SINGLE DOLLAR AMOUNT CEILING TO CONCURRENT CLAIMS UNDER TITLES II AND XVI.—

(A) IN GENERAL.—Section 206(a)(2) of such Act (as amended by section 5106(a)(1) of the Omnibus Budget Reconciliation Act of 1990) (42 U.S.C. 406(a)(2)) is amended—

(i) by redesignating subparagraph (C) as subparagraph (D); and

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

"(C) In any case involving—

"(i) an agreement described in subparagraph (A) with any person relating to both a claim of entitlement to past-due benefits under this title and a claim of entitlement to past-due benefits under title XVI, and

"(ii) a favorable determination made by the Secretary with respect to both such claims,

the Secretary may approve such agreement only if the total fee or fees specified in such agreement does not exceed, in the aggregate, the dollar amount in effect under subparagraph (A)(ii)(II).".

(B) CONFORMING AMENDMENT.—Section 206(a)(3)(A) of such Act (as amended by section 5106(a)(1) of the Omnibus Budget Reconciliation Act of 1990) (42 U.S.C. 406(a)(3)(A)) is amended by striking "paragraph (2)(C)" and inserting "paragraph (2)(D)".

(d) AMENDMENT RELATED TO PROVISIONS IN SECTION 5115 RELATING TO ADVANCE TAX TRANSFERS.—Section 201(a) of the Social Security Act (42 U.S.C. 401(a)) is amended in the last sentence by striking "and" the second place it appears.

(e) EFFECTIVE DATE.—Each amendment made by this section shall take effect as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990 to which such amendment relates.

SEC. 9014. AVAILABILITY AND USE OF DEATH INFORMATION UNDER THE OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM.

(a) IMPROVEMENTS IN PROGRAM FOR USE OF DEATH CERTIFICATES TO CORRECT PROGRAM INFORMATION.—

(1) ELIMINATION OF STATE RESTRICTIONS ON USE OF INFORMATION.—Section 205(r)(1) of the Social Security Act (42 U.S.C. 405(r)(1)) is amended by adding at the end, after and below subparagraph (B), the following new sentence:

"Any contract entered into pursuant to subparagraph (A) shall not include any restriction on the use of information obtained by the Secretary pursuant to such contract, except to the extent that such use may be restricted under paragraph (6).".

(2) INFORMATION PROVIDED TO STATE AGENCIES FREE OF CHARGE.—

(A) IN GENERAL.—Section 205(r)(4) of such Act (42 U.S.C. 405(r)(4)) is amended to read as follows:

"(4)(A) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a State agency other than under this Act, the Secretary shall to the extent feasible provide such information free of charge through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals, if such arrangement does not conflict with the duties of the Secretary under paragraph (1).

"(B) The Secretary may enter into similar agreements with States to provide information free of charge for their use in programs wholly funded by the States if such arrangement does not conflict with the duties of the Secretary under paragraph (1).".

(B) CONFORMING AMENDMENT.—Section 205(r)(3) of such Act (42 U.S.C. 405(r)(3)) is amended by striking "or State".

(3) USE BY STATES OF SOCIAL SECURITY ACCOUNT NUMBERS CONTINGENT UPON PARTICIPATION IN PROGRAM.—Section 205(r)(2) of such Act (42 U.S.C. 405(r)(2)) is amended—

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

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

"(B) Notwithstanding section 7(a)(2)(B) of the Privacy Act of 1974 and clauses (i) and (v) of subsection (c)(2)(C) of this section, any State which is not a party to a contract with the Secretary meeting the requirements of paragraph (1) (and any political subdivision thereof) may not utilize an individual's social security account number in the administration of any driver's license or motor vehicle registration law.".

(b) STUDY REGARDING IMPROVEMENTS IN GATHERING AND REPORTING OF DEATH INFORMATION.

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of possible improvements in the current methods of gathering and reporting death information by the Federal, State, and local governments which would result in more efficient and expeditious handling of such information.

(2) SPECIFIC MATTERS TO BE STUDIED.—In carrying out the study required under this subsection, the Secretary shall—

(A) ascertain the delays in the receipt of death information which are currently encountered by the Social Security Administration and other agencies in need of such information on a regular basis,

(B) analyze the causes of such delays,

(C) develop alternative options for improving Federal, State, and local agency cooperation in reducing such delays, and

(D) evaluate the costs and benefits associated with the options referred to in subparagraph (C).

(3) REPORT.—Not later than June 1, 1993, the Secretary shall submit a written report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of the study conducted pursuant to this subsection, together with such administrative and legislative recommendations as the Secretary may consider appropriate.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall take effect 1 year after the date of the enactment of this Act.

(2) PROMOTION OF ENTRY INTO NEW CONTRACTS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall take such actions as are necessary and appropriate to promote entry into contracts under section 205(r) of the Social Security Act which are in compliance with the requirements of the amendments made by subsection (a).

SEC. 9015. PROHIBITION OF MISUSE OF DEPARTMENT OF TREASURY NAMES, SYMBOLS, ETC.

(a) GENERAL RULE.—Subchapter II of chapter 3 of title 31, United States Code, is amended by adding at the end thereof the following new section:

"§333. Prohibition of misuse of Department of Treasury names, symbols, etc.

"(a) GENERAL RULE.—No person may use, in connection with, or as a part of, any advertisement, solicitation, business activity, or product, whether alone or with other words, letters, symbols, or emblems—

"(1) the words 'Department of the Treasury', or the name of any service, bureau, office, or other subdivision of the Department of the Treasury,

"(2) the titles 'Secretary of the Treasury' or 'Treasurer of the United States' or the title of any other officer or employee of the Department of the Treasury,

"(3) the abbreviations or initials of any entity referred to in paragraph (1),

"(4) the words 'United States Savings Bond' or the name of any other obligation issued by the Department of the Treasury,

"(5) any symbol or emblem of an entity referred to in paragraph (1) (including the design of any envelope or stationary used by such an entity), and

"(6) any colorable imitation of any such words, titles, abbreviations, initials, symbols, or emblems,

in a manner which could reasonably be interpreted or construed as conveying the false impression that such advertisement, solicitation, business activity, or product is in any manner approved, endorsed, sponsored, or authorized by, or associated with, the Department of the Treasury or any entity referred to in paragraph (1) or any officer or employee thereof.

"(b) TREATMENT OF WAIVERS.—Any determination of whether a person has violated the provisions of subsection (a) shall be made without regard to any use of a disclaimer of affiliation with the United States Government or any particular agency or instrumentality thereof.

"(c) CIVIL PENALTY.—

"(1) IN GENERAL.—The Secretary of the Treasury may impose a civil penalty on any person who violates the provisions of subsection (a).

"(2) AMOUNT OF PENALTY.—The amount of the civil penalty imposed by paragraph (1) shall not exceed $5,000 for each use of any material in violation of subsection (a). If such use is in a broadcast or telecast, the preceding sentence shall be applied by substituting '$25,000' for '$5,000'.

"(3) TIME LIMITATIONS.—

"(A) ASSESSMENTS.—The Secretary of the Treasury may assess any civil penalty under paragraph (1) at any time before the end of the 3-year period beginning on the date of the violation with respect to which such penalty is imposed.

"(B) CIVIL ACTION.—The Secretary of the Treasury may commence a civil action to recover any penalty imposed under this subsection at any time before the end of the 2-year period beginning on the date on which such penalty was assessed."

(b) CLERICAL AMENDMENT.—The analysis for chapter 3 of title 31, United States Code, is amended by adding after the item relating to section 332 the following new item;

"333. Prohibition of misuse of Department of Treasury names, symbols, etc."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(d) REPORT.—Not later than May 1, 1994, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the implementation of the amendments made by this section. Such report shall include the number of cases in which the Secretary has notified persons of violations of section 333 of title 31, United States Code (as added by subsection (a)), the number and amount of civil penalties assessed under such section, and the total amount of such penalties collected.

Subtitle B—Human Resources Provisions

SEC. 9101. CORRECTIONS RELATED TO THE INCOME SECURITY AND HUMAN RESOURCES PROVISIONS OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990.

(a) AMENDMENT RELATED TO SECTION 5035(a)(2).—Section 5035(a)(2) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended by striking "a semicolon" and inserting " '; and' ".

(b) REPEAL OF PROVISION INADVERTENTLY INCLUDED.—Section 5057 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), and the amendment made by such section, are hereby repealed, and section 1139(d) of the Social Security Act shall be applied and administered as if such section 5057 had never been enacted.

(c) AMENDMENT RELATED TO SECTION 5105(d)(1)(B).—Section 5105(d)(1)(B) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388-266) is amended to read as follows:

"(B) TITLE XVI.—Section 1631(a)(2)(F) (42 U.S.C. 1383(a)(2)(F)), as so redesignated by subsection (c)(2) of this section, is amended to read as follows:

" '(F) The Secretary shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this paragraph, including—

" '(i) the number of cases in which the representative payee was changed;

" '(ii) the number of cases discovered where there has been a misuse of funds;

" '(iii) how any such cases were dealt with by the Secretary;

" '(iv) the final disposition of such cases (including any criminal penalties imposed); and

" '(v) such other information as the Secretary determines to be appropriate.'.".

(d) AMENDMENT RELATED TO SECTION 5105(a)(1)(B).—The second paragraph of section 1631(a) of the Social Security Act (42 U.S.C. 1383(a)) is amended by striking "(A)(i) Payments" and inserting "(2)(A)(i) Payments".

(e) AMENDMENTS RELATED TO SECTION 5105(b).—Section 1631(a)(2)(C) of the Social Security Act (42 U.S.C. 1383(a)(2)(C)) is amended—

(1) by striking clause (ii);

(2) by redesignating clauses (iii), (iv), and (v) as clauses (ii), (iii), and (iv), respectively; and

(3) in clause (iv) (as so redesignated), by striking "(iii), and (iv)" and inserting "and (iii)".

(f) AMENDMENTS RELATED TO SECTION 5107(a)(2)(B).—Section 1631(c)(1)(B) of the Social Security Act (42 U.S.C. 1383(c)(1)(B)) is amended by striking "paragraph (1)" each place such term appears and inserting "subparagraph (A)".

(g) AMENDMENT RELATED TO SECTION 5109(a)(2).—Section 1631 of the Social Security Act (42 U.S.C. 1383) is amended by redesignat-

ing the subsection (n) added by section 5109(a)(2) of the Omnibus Budget Reconciliation Act of 1990, as subsection (o).

(h) AMENDMENTS RELATED TO SECTION 11115(b)(2).—Section 11115(b)(2) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) is amended—

(1) in subparagraph (A), by striking "paragraph (8)" and inserting "paragraph (9)";

(2) in subparagraph (B), by striking "paragraph (9)" and inserting "paragraph (10)"; and

(3) in subparagraph (C), by redesignating the new paragraph added thereby as paragraph (11).

(i) AMENDMENT RELATED TO SECTION 13101(d)(2).—Section 256(k)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by striking "—" the second place it appears and all that follows through "(I)"; and

(2) by striking "; or" and all that follows through "(II)" and inserting ", except that a State may not be allotted an amount under this subparagraph that exceeds".

(j) EFFECTIVE DATE.—Each amendment made by this section shall take effect as if included in the provision of the Omnibus Budget Reconciliation Act of 1990 to which the amendment relates at the time such provision became law.

SEC. 9102. TECHNICAL CORRECTIONS RELATED TO THE HUMAN RESOURCE AND INCOME SECURITY PROVISIONS OF OMNIBUS BUDGET RECONCILIATION ACT OF 1989.

(a) AMENDMENT RELATING TO SECTION 8004(a).—Section 408(m)(2)(A) of the Social Security Act (42 U.S.C. 608(m)(2)(A)) is amended by striking "a fiscal" and inserting "the fiscal".

(b) AMENDMENT RELATING TO SECTION 8006(a).—Section 473(a)(6)(B) of the Social Security Act (42 U.S.C. 673(a)(6)(B)) is amended by striking "474(a)(3)(B)" and inserting "474(a)(3)(C)".

(c) AMENDMENT RELATING TO SECTION 8007(b)(3).—Subparagraph (D) of section 475(5) of the Social Security Act (42 U.S.C. 675(5)(D)) is amended by moving such subparagraph 2 ems to the right so that the left margin of such subparagraph is aligned with the left margin of subparagraph (C) of such section.

(d) EFFECTIVE DATE.—Each amendment made by this section shall take effect as if the amendment had been included in the provision of the Omnibus Budget Reconciliation Act of 1989 to which the amendment relates, at the time the provision became law.

SEC. 9103. ELIMINATION OF OBSOLETE PROVISIONS RELATING TO TREATMENT OF THE EARNED INCOME TAX CREDIT.

(a) TREATMENT OF EITC AS EARNED INCOME.—Section 1612(a)(1) of the Social Security Act (42 U.S.C. 1382a(a)(1)) is amended by striking subparagraph (C) and by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

(b) ADJUSTMENT OF BENEFITS DUE TO TREATMENT OF EITC AS EARNED INCOME.—Section 1631(b) (42 U.S.C. 1383(b)) is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

SEC. 9104. REDESIGNATION OF CERTAIN PROVISIONS.

Section 1631(e)(6) of the Social Security Act (42 U.S.C. 1383(e)(6)) is amended by redesignating subparagraphs (1) and (2) as subparagraphs (A) and (B), respectively.

TITLE X—MEDICARE PROVISIONS

SEC. 10000. REFERENCES IN TITLE.

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

(b) REFERENCES TO OBRA.—In this title, the terms "OBRA-1986", "OBRA-1987", "OBRA-1989", and "OBRA-1990" refer to the Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509), the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203), the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239), and the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), respectively.

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

TITLE X—MEDICARE PROVISIONS

Sec. 10000. References in title.

Subtitle A—Provisions Relating to Part A

Sec. 10001. Transition for hospital outlier thresholds.
Sec. 10002. Essential access community hospital (EACH) amendments.
Sec. 10003. Wage index provisions.
Sec. 10004. Reauthorization of rural transition grant program.
Sec. 10005. Regional referral centers.
Sec. 10006. Medicare-dependent, small rural hospitals.
Sec. 10007. Hemophilia pass-through.
Sec. 10008. State hospital payment programs.
Sec. 10009. Psychology services in hospitals.
Sec. 10010. Graduate medical education provided in a hospital-owned community health center.
Sec. 10011. Uniformed services treatment facilities.
Sec. 10012. Requiring hospitals and nursing facilities to notify residents of availability of hospice benefit.
Sec. 10013. Skilled nursing facility wage index.
Sec. 10014. DRG payment window technical clarification and nursing home reform clerical error; miscellaneous and technical corrections.
Sec. 10015. Extension of rural hospital demonstration.

Subtitle B—Provisions Relating to Part B

PART 1—PHYSICIANS' SERVICES

Sec. 10101. Separate payment for interpretation of electrocardiograms.
Sec. 10102. Payments for new physicians and practitioners.
Sec. 10103. Basing payments for anesthesia services on actual time.
Sec. 10104. Geographic adjustment factors for medicare physicians' services.
Sec. 10105. Extra-billing limits.
Sec. 10106. Relative values for pediatric services.
Sec. 10107. Antigens under physician fee schedule.
Sec. 10108. Administration of claims relating to physicians' services.
Sec. 10109. Miscellaneous and technical corrections.

PART 2—AMBULATORY SURGICAL SERVICES

Sec. 10111. *Eye or eye and ear hospitals.*
Sec. 10112. *Extension of cap on payments for intraocular lenses.*
Sec. 10113. *Miscellaneous and technical corrections.*

PART 3—DURABLE MEDICAL EQUIPMENT

Sec. 10121. *Certification of suppliers.*
Sec. 10122. *Prohibition against carrier forum shopping.*
Sec. 10123. *Restrictions on certain marketing and sales activities.*
Sec. 10124. *Kickback clarification.*
Sec. 10125. *Beneficiary liability for noncovered services.*
Sec. 10126. *Adjustments for inherent reasonableness.*
Sec. 10127. *Payment for parenteral and enteral nutrients, supplies, and equipment during 1993.*
Sec. 10128. *Treatment of nebulizers and aspirators.*
Sec. 10129. *Payment for ostomy supplies, tracheostomy supplies, urologicals, and surgical dressings.*
Sec. 10130. *Payments for TENS devices.*
Sec. 10131. *Miscellaneous and technical corrections.*

PART 4—OTHER PROVISIONS

Sec. 10141. *Payment for medically directed certified registered nurse anesthetist services.*
Sec. 10142. *Extension of Alzheimer's disease demonstration.*
Sec. 10143. *Part B late enrollment penalty.*
Sec. 10144. *Oral cancer drugs.*
Sec. 10145. *Speech-language pathologists and audiologists.*
Sec. 10146. *Extension of municipal health service demonstration projects.*
Sec. 10147. *Treatment of certain Indian health programs and facilities as Federally-qualified health centers.*
Sec. 10148. *Extension of influenza vaccination demonstration.*
Sec. 10149. *Miscellaneous and technical corrections.*

Subtitle C—Provisions Relating to Parts A and B

Sec. 10201. *Provisions relating to physician ownership and referral.*
Sec. 10202. *Direct graduate medical education.*
Sec. 10203. *End stage renal disease.*
Sec. 10204. *Medicare secondary payer.*
Sec. 10205. *Improved outreach for qualified medicare beneficiaries.*
Sec. 10206. *Social health maintenance organizations.*
Sec. 10207. *Peer review organizations.*
Sec. 10208. *Hospice information to home health beneficiaries.*
Sec. 10209. *Interest payments.*
Sec. 10210. *Clarification of judicial review rights.*
Sec. 10211. *Adjustments to discretionary spending limits.*
Sec. 10212. *Health maintenance organizations.*
Sec. 10213. *Treatment of certain State health care programs.*
Sec. 10214. *Miscellaneous and technical corrections.*

Subtitle D—Provisions Relating to Medicare Supplemental Insurance Policies

Sec. 10301. *Standards for medicare supplemental insurance policies.*

Subtitle A—Provisions Relating to Part A

SEC. 10001. TRANSITION FOR HOSPITAL OUTLIER THRESHOLDS.

The Secretary of Health and Human Services, under section 1886 of the Social Security Act, shall use the day outlier methodology in effect for fiscal year 1992 for payment for discharges occurring on or after January 1, 1993, and before July 1, 1993. For payment for discharges occurring on or after July 1, 1993, and before September 30, 1994, the Secretary shall use the day outlier methodology

that (but for the previous sentence) would be in effect for fiscal year 1993.

SEC. 10002. ESSENTIAL ACCESS COMMUNITY HOSPITAL (EACH) AMENDMENTS.

(a) INCREASING NUMBER OF PARTICIPATING STATES.—Section 1820(a)(1) (42 U.S.C. 1395i-4(a)(1)) is amended by striking "7" and inserting "9".

(b) TREATMENT OF INPATIENT HOSPITAL SERVICES PROVIDED IN RURAL PRIMARY CARE HOSPITALS.—

(1) IN GENERAL.—Section 1820(f)(1)(F) (42 U.S.C. 1395i-4(f)(1)(F)) is amended to read as follows:

"(F) subject to paragraph (4), provides not more than 6 inpatient beds (meeting such conditions as the Secretary may establish) for providing inpatient care to patients requiring stabilization before discharge or transfer to a hospital, except that the facility may not provide any inpatient hospital services—

"(i) to any patient whose attending physician does not certify that the patient may reasonably be expected to be discharged or transferred to a hospital within 72 hours of admission to the facility; or

"(ii) consisting of surgery or any other service requiring the use of general anesthesia (other than surgical procedures specified by the Secretary under section 1833(i)(1)(A)), unless the attending physician certifies that the risk associated with transferring the patient to a hospital for such services outweighs the benefits of transferring the patient to a hospital for such services.".

(2) LIMITATION ON AVERAGE LENGTH OF STAY.—Section 1820(f) (42 U.S.C. 1395i-4(f)) is amended by adding at the end the following new paragraph:

"(4) LIMITATION ON AVERAGE LENGTH OF INPATIENT STAYS.—The Secretary may terminate a designation of a rural primary care hospital under paragraph (1) if the Secretary finds that the average length of stay for inpatients at the facility during the previous year in which the designation was in effect exceeded 72 hours. In determining the compliance of a facility with the requirement of the previous sentence, there shall not be taken into account periods of stay of inpatients in excess of 72 hours to the extent such periods exceed 72 hours because transfer to a hospital is precluded because of inclement weather or other emergency conditions.".

(3) CONFORMING AMENDMENT.—Section 1814(a)(8) (42 U.S.C. 1395f(a)(8)) is amended by striking "such services" and all that follows and inserting "the individual may reasonably be expected to be discharged or transferred to a hospital within 72 hours after admission to the rural primary care hospital.".

(4) GAO REPORTS.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit reports to Congress on—

(A) the application of the requirements under section 1820(f) of the Social Security Act (as amended by this sub-

section) that rural primary care hospitals provide inpatient care only to those individuals whose attending physicians certify may reasonably be expected to be discharged within 72 hours after admission and maintain an average length of inpatient stay during a year that does not exceed 72 hours; and

(B) the extent to which such requirements have resulted in such hospitals providing inpatient care beyond their capabilities or have limited the ability of such hospitals to provide needed services.

(c) DESIGNATION OF HOSPITALS.—

(1) PERMITTING DESIGNATION OF HOSPITALS LOCATED IN URBAN AREAS.—

(A) IN GENERAL.—Section 1820 (42 U.S.C. 1395i-4) is amended—

(i) by striking paragraph (1) of subsection (e) and redesignating paragraphs (2) through (6) as paragraphs (1) through (5); and

(ii) in subsection (e)(1)(A) (as redesignated by subparagraph (A))—

(I) by striking "is located" and inserting "except in the case of a hospital located in an urban area, is located",

(II) by striking ", (ii)" and inserting "or (ii)",

(III) by striking "or (iii)" and all that follows through "section,", and

(IV) in subsection (i)(1)(B), by striking "paragraph (3)" and inserting "paragraph (2)".

(B) NO CHANGE IN MEDICARE PROSPECTIVE PAYMENT.—Section 1886(d)(5)(D) (42 U.S.C. 1395ww(d)(5)(D)) is amended—

(i) in clause (iii)(III), by inserting "located in a rural area and" after "that is", and

(ii) in clause (v), by inserting "located in a rural area and" after "in the case of a hospital".

(2) PERMITTING HOSPITALS LOCATED IN ADJOINING STATES TO PARTICIPATE IN STATE PROGRAM.—

(A) IN GENERAL.—Section 1820 (42 U.S.C. 1395i-4) is amended—

(i) by redesignating subsection (k) as subsection (l); and

(ii) by inserting after subsection (j) the following new subsection:

"(k) ELIGIBILITY OF HOSPITALS NOT LOCATED IN PARTICIPATING STATES.—Notwithstanding any other provision of this section—

"(1) for purposes of including a hospital or facility as a member institution of a rural health network, a State may designate a hospital or facility that is not located in the State as an essential access community hospital or a rural primary care hospital if the hospital or facility is located in an adjoining State and is otherwise eligible for designation as such a hospital;

"(2) the Secretary may designate a hospital or facility that is not located in a State receiving a grant under subsection

(a)(1) as an essential access community hospital or a rural primary care hospital if the hospital or facility is a member institution of a rural health network of a State receiving a grant under such subsection; and

"(3) a hospital or facility designated pursuant to this subsection shall be eligible to receive a grant under subsection (a)(2).".

(B) CONFORMING AMENDMENTS.—(A) Section 1820(c)(1) (42 U.S.C. 1395i-4(c)(1)) is amended by striking "paragraph (3)" and inserting "paragraph (3) or subsection (k)".

(ii) Paragraphs (1)(A) and (2)(A) of section 1820(i) (42 U.S.C. 1395i-4(i)) are each amended—

(I) in clause (i), by striking "(a)(1)" and inserting "(a)(1) (except as provided in subsection (k))", and

(II) in clause (ii), by striking "subparagraph (B)" and inserting "subparagraph (B) or subsection (k)".

(d) SKILLED NURSING SERVICES IN RURAL PRIMARY CARE HOSPITALS.—Section 1820(f)(3) (42 U.S.C. 1395i-4(f)(3)) is amended by striking "because the facility" and all that follows and inserting the following: "because, at the time the facility applies to the State for designation as a rural primary care hospital, there is in effect an agreement between the facility and the Secretary under section 1883 under which the facility's inpatient hospital facilities are used for the furnishing of extended care services, except that the number of beds used for the furnishing of such services may not exceed the total number of licensed inpatient beds at the time the facility applies to the State for such designation (minus the number of inpatient beds used for providing inpatient care pursuant to paragraph (1)(F)). For purposes of the previous sentence, the number of beds of the facility used for the furnishing of extended care services shall not include any beds of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a rural primary care hospital.".

(e) PAYMENT FOR OUTPATIENT RURAL PRIMARY CARE HOSPITAL SERVICES.—Section 1834(g)(1) (42 U.S.C. 1395m(g)(1)) is amended by adding at the end the following:

"The amount of payment shall be determined under either method without regard to the amount of the customary or other charge.".

(f) CLARIFICATION OF PHYSICIAN STAFFING REQUIREMENT FOR RURAL PRIMARY CARE HOSPITALS.—Section 1820(f)(1)(H) (42 U.S.C. 1395i-4(f)(1)(H)) is amended by striking the period and inserting the following: ", except that in determining whether a facility meets the requirements of this subparagraph, subparagraphs (E) and (F) of that paragraph shall be applied as if any reference to a 'physician' is a reference to a physician as defined in section 1861(r)(1).".

(g) TECHNICAL AMENDMENTS RELATING TO PART A DEDUCTIBLE, COINSURANCE, AND SPELL OF ILLNESS.—(1) Section 1812(a)(1) (42 U.S.C. 1395d(a)(1)) is amended—

(A) by striking "inpatient hospital services" the first place it appears and inserting "inpatient hospital services or inpatient rural primary care hospital services";

(B) by striking "inpatient hospital services" the second place it appears and inserting "such services"; and

(C) by striking "and inpatient rural primary care hospital services".

(2) Sections 1813(a) and 1813(b)(3)(A) (42 U.S.C. 1395e(a), 1395e(b)(3)(A)) are each amended by striking "inpatient hospital services" each place it appears and inserting "inpatient hospital services or inpatient rural primary care hospital services".

(3) Section 1813(b)(3)(B) (42 U.S.C. 1395e(b)(3)(B)) is amended by striking "inpatient hospital services" and inserting "inpatient hospital services, inpatient rural primary care hospital services".

(4) Section 1861(a) (42 U.S.C. 1395x(a)) is amended—

(A) in paragraphs (1), by striking "inpatient hospital services" and inserting "inpatient hospital services, inpatient rural primary care hospital services"; and

(B) in paragraph (2), by striking "hospital" and inserting "hospital or rural primary care hospital".

(h) AUTHORIZATION OF APPROPRIATIONS.—Section 1820(k) (42 U.S.C. 1395i-4(k)) is amended by striking "1990, 1991, and 1992" and inserting "1990 through 1995".

(i) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 10003. WAGE INDEX PROVISIONS.

(a) WAGE INDEX HOLD HARMLESS PROTECTION.—

(1) IN GENERAL.—Section 1886(d)(8)(C)(iii) (42 U.S.C. 1395ww(d)(8)(C)(iii)) is amended by adding at the end the following new sentence: "In the case of an urban area in a State that—

"(I) has a wage index below the wage index for rural areas in such State, or

"(II) is composed of a single urban area,

such an application or decision may not result in a reduction of that urban area's wage index.".

(2) NO STANDARDIZED AMOUNT ADJUSTMENT.—The Secretary of Health and Human Services shall not revise the fiscal year 1993 standardized amounts pursuant to subsections (d)(3)(B) and (d)(8)(D) of the Social Security Act to account for the amendment made by paragraph (1).

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to discharges occurring on or after the date which is 30 days after the date of the enactment of this Act.

(b) UPDATING STANDARDS FOR TREATING RURAL COUNTIES AS URBAN COUNTIES BASED ON RATES OF COMMUTATION.—

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

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

(B) by striking "standards" and inserting "standards most recently used" each place it appears, and

(C) by striking "published in the Federal Register on January 3, 1980".

(2) HOLD HARMLESS FOR COUNTIES CURRENTLY TREATED AS URBAN.—Any hospital located in a rural county that is treated as being located in an urban metropolitan statistical area pursuant to section 1886(d)(8)(B) of the Social Security Act as of the

date of the enactment of this Act shall continue to be so treated notwithstanding the amendments made by paragraph (1).

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) shall be effective on October 1, 1993.

(c) USE OF OCCUPATIONAL MIX IN GUIDELINES.—Section 1886(d)(10)(D)(i)(I) (42 U.S.C. 1395ww(d)(10)(D)(i)(I)) is amended by inserting "(to the extent the Secretary determines appropriate)" after "taking into account".

SEC. 10004. REAUTHORIZATION OF RURAL TRANSITION GRANT PROGRAM.

Section 4005(e)(9) of OBRA-1987 is amended—

(1) by striking "1989 and" and inserting "1989,"; and

(2) by striking "1992" and inserting "1992 and $30,000,000 for each of fiscal years 1993 through 1997".

SEC. 10005. REGIONAL REFERRAL CENTERS.

(a) EXTENSION THROUGH FISCAL YEAR 1994.—Section 6003(d) of OBRA-1989 (42 U.S.C. 1395ww note) is amended by striking "October 1, 1992" and inserting "October 1, 1994".

(b) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a rural referral center under section 1886(d)(5)(C) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993, the Secretary of Health and Human Services shall—

(1) notify such hospital of such failure to qualify,

(2) provide an opportunity for such hospital to decline such reclassification, and

(3) if the hospital declines such reclassification, administer the Social Security Act (other than section 1886(d)(8)(D)) for fiscal year 1993 as if the decision by the Review Board had not occurred.

SEC. 10006. MEDICARE-DEPENDENT, SMALL RURAL HOSPITALS.

(a) IN GENERAL.—Section 1886(d)(5)(G) (42 U.S.C. 1395ww(d)(5)(G)) is amended—

(1) by amending clause (i) to read as follows:

"(i) In the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) for discharges occurring before October 1, 1994, shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).";

(2) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv); and

(3) by inserting after clause (i) the following new clause:

"(ii) The amount determined under this clause is

"(I) for discharges occurring during the first 3 12-month cost reporting periods that begin on or after April 1, 1990, the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D)) exceeds the amount determined under paragraph (1)(A)(iii); and

"(II) for discharges occurring during any subsequent cost reporting period (or portion thereof), 50 percent of the amount by which the hospital's target amount for the cost reporting period

(as defined in subsection (b)(3)(D)) exceeds the amount determined under paragraph (1)(A)(iii).".

(b) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a medicare-dependent, small rural hospital under section 1886(d)(5)(G)(i) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993, the Secretary of Health and Human Services shall—

(1) notify such hospital of such failure to qualify,

(2) provide an opportunity for such hospital to decline such reclassification, and

(3) if the hospital declines such reclassification, administer the Social Security Act (other than section 1886(d)(8)(D)) for fiscal year 1993 as if the decision by the Review Board had not occurred.

SEC. 10007. HEMOPHILIA PASS-THROUGH.

(a) IN GENERAL.—Section 6011(d) of OBRA–1989 is amended by striking "2 years after the date of enactment of this Act" and inserting "September 30, 1994".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of OBRA–1989.

SEC. 10008. STATE HOSPITAL PAYMENT PROGRAMS.

(a) RECOUPMENT FROM NEW JERSEY HOSPITALS.—

(1) MORATORIUM ON RECOUPMENT.—Prior to April 1, 1993, the Secretary of Health and Human Services (in this section referred to as the "Secretary") may not recoup from or otherwise reduce payments to hospitals in the State of New Jersey because of alleged overpayments to such hospitals under title XVIII of the Social Security Act which occurred during the period of the statewide hospital reimbursement demonstration project conducted in that State between January 1, 1985, and December 31, 1988, under a waiver granted under section 1886(c) of the Social Security Act.

(2) PROVISION OF PAYMENT DATA.—The Secretary may not recoup from or otherwise reduce payments to hospitals in the State of New Jersey because of alleged overpayments described in paragraph (1) until the Secretary provides the State and hospitals located in the State with all relevant data used by the Secretary to determine the amount of such alleged overpayments, including (but not limited to) the cost reports submitted by the hospitals to the Secretary during the period of the statewide hospital reimbursement demonstration project described in such paragraph and the methodology used by the Secretary to determine payments to such hospitals under title XVIII of the Social Security Act during such period.

(b) CLARIFICATION OF PAYMENTS UNDER A MEDICARE-APPROVED STATE HOSPITAL REIMBURSEMENT SYSTEM.—In the case of a State hospital reimbursement system that meets the requirements of section 1814(b)(3) of the Social Security Act, no other provision in title XVIII of such Act, no provision of title XIX of such Act, no provision of the Employee Retirement Income Security Act of 1974, and no provision of chapter 81 or 89 of title 5, United States Code, shall

be construed as preventing the system from providing that payment for services covered under the system be made on the basis of rates provided for under the system.

SEC. 10009. PSYCHOLOGY SERVICES IN HOSPITALS.

Section 1861(e)(4) (42 U.S.C. 1395x(e)(4)) is amended by striking "physician;" and inserting "physician, except that a patient receiving qualified psychologist services (as defined in susection (ii)) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law;".

SEC. 10010. GRADUATE MEDICAL EDUCATION PROVIDED IN A HOSPITAL-OWNED COMMUNITY HEALTH CENTER.

Section 1886(d)(5)(B)(iv) (42 U.S.C. 1395ww(d)(5)(B)(iv)) is amended by inserting after "the hospital" the following: "or providing services at any entity receiving a grant under section 330 of the Public Health Service Act that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished to the hospital by such interns and residents)".

SEC. 10011. UNIFORMED SERVICES TREATMENT FACILITIES.

(a) COVERAGE OF SERVICES PROVIDED IN CERTAIN UNIFORMED SERVICES TREATMENT FACILITIES.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary of Health and Human Services may not take any action to recover amounts that were paid by the United States under title XVIII of the Social Security Act to the facilities described in paragraph (3) (or to other individuals or entities with whom such facilities had entered into agreements to provide services under such title) for services provided during the period beginning October 1, 1986, and ending December 31, 1989.

(2) EXCEPTION.—The Secretary may take a recoupment action for the sole purpose of securing obligation of the funds provided to the Uniformed Services Treatment Facilities program pursuant to the Department of Defense Appropriations Act, 1993 to fulfill such an action.

(3) FACILITIES DESCRIBED.—The facilities referred to in paragraph (1) are the hospitals described in section 248c of title 42, United States Code, that are located in Boston, Massachusetts; Baltimore, Maryland; and Seattle, Washington.

(b) STUDY OF JOINT MEDICAL FACILITIES.—

(1) STUDY.—The Secretary of Health and Human Services, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, shall conduct a study of the feasibility and desirability of establishing joint medical facilities among the Department of Defense, the Department of Veterans' Affairs, and other public and private entities, and shall include in such study an analysis of the need to make changes in the medicare and medicaid programs (including facility certification standards under such programs) in order to facilitate the establishment of such joint medical facilities.

(2) REPORT.—Not later than June 1, 1993, the Secretary of Health and Human Services shall submit a report to Congress on the study conducted under paragraph (1).

SEC. 10012. REQUIRING HOSPITALS AND NURSING FACILITIES TO NOTIFY RESIDENTS OF AVAILABILITY OF HOSPICE BENEFIT.

(a) HOSPITALS.—Section 1861(ee)(2)(D) (42 U.S.C. 1395x(ee)(2)(D)) is amended by inserting ", including hospice services," after "post-hospital services".

(b) NURSING FACILITIES.—Section 1819(c)(1)(B) (42 U.S.C. 1395i-3(c)(1)(B)) is amended—

(1) by striking "and" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting "; and"; and

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

"(iv) inform each resident who is entitled to benefits under this title, orally and in writing at the time of admission to the facility, of the entitlement of individuals to hospice care under section 1812(a)(4) (unless there is no hospice program providing hospice care for which payment may be made under this title within the geographic area of the facility and it is not the common practice of the facility to refer patients to hospice programs located outside such geographic area).".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after the first day of the first month beginning more than one year after the date of the enactment of this Act.

SEC. 10013. SKILLED NURSING FACILITY WAGE INDEX.

(a) IN GENERAL.—Within 2 years of the date of the enactment of this Act, the Secretary of Health and Human Services shall begin to collect data on employee compensation and paid hours of employment in skilled nursing facilities for the purpose of constructing a skilled nursing facility wage index adjustment to the routine service cost limits required under section 1888(a)(4) of the Social Security Act.

(b) PROPAC REPORT.—The Prospective Payment Assessment Commission shall, by March 1, 1993, study and report to the Congress on the impact of applying routine cost limits for skilled nursing facilities on a regional basis.

SEC. 10014. DRG PAYMENT WINDOW TECHNICAL CLARIFICATION AND NURSING HOME REFORM CLERICAL ERROR; MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) CLARIFICATION OF DRG PAYMENT WINDOW EXPANSION.—The first sentence of section 1886(a)(4) (42 U.S.C. 1395ww(a)(4)) is further amended by striking "and includes" and inserting "and (in the case of a subsection (d) hospital) includes".

(b) TECHNICAL CORRECTION RELATING TO RESIDENT ASSESSMENT IN NURSING HOMES.—Section 1819(b)(3)(C)(i)(I) (42 U.S.C. 1395i-3(b)(3)(C)(i)(I)) is amended by striking "not later than" before "14 days".

(c) CLERICAL CORRECTIONS.—(1) Section 1814(i)(1)(C)(i) (42 U.S.C. 1395f(i)(1)(C)(i)) is amended by striking "1990,," and inserting "1990,".

(2) Section 1816(f)(2)(A)(ii) (42 U.S.C. 1396h(f)(2)(A)(ii)) is amended by striking "such agency" and inserting "such agency's".

(3) Section 1886(d)(1)(A)(iii) (42 U.S.C. 1395ww(d)(1)(A)(iii)) is amended by striking ", the sum of" and inserting "is equal to the sum of".

SEC. 10015. EXTENSION OF RURAL HOSPITAL DEMONSTRATION.

Section 4008(i)(1) of OBRA-1990 is amended by adding at the end the following new sentence: "The Secretary shall continue any such demonstration project until at least December 31, 1995.".

Subtitle B—Provisions Relating to Part B

PART 1—PHYSICIANS' SERVICES

SEC. 10101. SEPARATE PAYMENT FOR INTERPRETATION OF ELECTROCARDIOGRAMS.

(a) IN GENERAL.—Paragraph (3) of section 1848(b) (42 U.S.C. 1395w-4(b)) is amended to read as follows:

"(3) TREATMENT OF INTERPRETATION OF ELECTROCARDIOGRAMS.—The Secretary—

"(A) shall make separate payment under this section for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or a consultation with a physician, and

"(B) shall adjust the relative values established for visits and consultations under subsection (c) so as not to include relative value units for interpretations of electrocardiograms in the relative value for visits and consultations.".

(b) ASSURING BUDGET NEUTRALITY.—Section 1848(c)(2) (42 U.S.C. 1395w-4(c)(2)) is amended by adding at the end the following new subparagraph:

"(E) BUDGET NEUTRALITY ADJUSTMENTS.—The Secretary—

"(i) shall reduce the relative values for all services (other than anesthesia services) established under this paragraph (and, in the case of anesthesia services, the conversion factor established by the Secretary for such services) by such percentage as the Secretary determines to be necessary so that, beginning in 1996, the amendment made by section 10101(a) of the Revenue Act of 1992 would not result in expenditures under this section that exceed the amount of such expenditures that would have been made if such amendment had not been made, and

"(ii) shall reduce the amounts determined under subsection (a)(2)(B)(i)(I) by such percentage as the Secretary determines to be required to assure that, taking into account the reductions made under clause (i), the amendment made by section 10101(a) of the Revenue Act of 1992 would not result in expenditures under this section in 1993 that exceed the amount of such expenditures that would have been made if such amendment had not been made.".

(c) CONFORMING AMENDMENTS.—Section 1848 (42 U.S.C. 1395w-4) is amended—

(1) in subsection (a)(2)(B)(i)(I), by inserting "and as adjusted under subsection (c)(2)(E)(ii)" after "for 1993";

(2) in subsection (c)(2)(A)(i), by adding at the end the following: "Such relative values are subject to adjustment under subparagraph (E)(i)."; and

(3) in subsection (i)(1)(B), by adding at the end "including adjustments under subsection (c)(2)(E),".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1993.

SEC. 10102. PAYMENTS FOR NEW PHYSICIANS AND PRACTITIONERS.

(a) EQUAL TREATMENT OF NEW PHYSICIANS AND PRACTITIONERS.—(1) Section 1848(a) (42 U.S.C. 1395w-4(a)) is amended by striking paragraph (4).

(2) Section 1842(b)(4) (42 U.S.C. 1395u(b)(4)) is amended by striking subparagraph (F).

(b) BUDGET NEUTRALITY ADJUSTMENT.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall reduce the following values and amounts for 1993 (to be applied for that year and subsequent years) by such uniform percentage as the Secretary determines to be required to assure that the amendments made by subsection (a) will not result in expenditures under part B of title XVIII of the Social Security Act in 1993 that exceed the amount of such expenditures that would have been made if such amendments had not been made:

(1) The relative values established under section 1848(c) of such Act for services (other than anesthesia services) and, in the case of anesthesia services, the conversion factor established under section 1848 of such Act for such services.

(2) The amounts determined under section 1848(a)(2)(B)(i)(I) of such Act.

(3) The prevailing charges or fee schedule amounts to be applied under such part for services of a health care practitioner (as defined in section 1842(b)(4)(F)(ii)(I) of such Act, as in effect before the date of the enactment of this Act).

(c) CONFORMING AMENDMENTS.—Section 1848 (42 U.S.C. 1395w-4), as amended by section 10101(c) of this subtitle, is amended—

(1) in subsection (a)(2)(B)(i)(I), by inserting "and section 10102(b) of the Revenue Act of 1992" after "(c)(2)(E)(ii)" after "for 1993";

(2) in subsection (c)(2)(A)(i), by inserting "and section 10102(b) of the Revenue Act of 1992" after "under subparagraph (E)(i)"; and

(3) in subsection (i)(1)(B), by inserting "and section 10102(b) of the Revenue Act of 1992" after "under subsection (c)(2)(E)".

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1993.

SEC. 10103. BASING PAYMENTS FOR ANESTHESIA SERVICES ON ACTUAL TIME.

(a) PHYSICIANS' SERVICES.—Section 1848(b)(2)(B) (42 U.S.C. 1395w-4(b)(2)(B)) is amended by adding at the end the following: "For anesthesia services furnished on or after January 1, 1993, the

Secretary may not modify the methodology in effect as of January 1, 1992, for determining the amount of time that may be billed for such services under this section.".

(b) SERVICES OF CERTIFIED REGISTERED NURSE ANESTHETISTS.—Section 1833(l)(1)(B) (42 U.S.C. 1395l(l)(1)(B)) is amended by adding at the end the following: "For anesthesia services furnished on or after January 1, 1993, the Secretary may not modify the methodology in effect as of January 1, 1992, for determining the amount of time that may be billed for such services under this section.".

SEC. 10104. GEOGRAPHIC ADJUSTMENT FACTORS FOR MEDICARE PHYSICIANS' SERVICES.

(a) REQUIRING CONSULTATION WITH REPRESENTATIVES OF PHYSICIANS IN REVIEWING GEOGRAPHIC ADJUSTMENT FACTORS.—Section 1848(e)(1)(C) (42 U.S.C. 1395w÷4(e)(1)(C)) is amended by striking "shall review" and inserting "shall, in consultation with appropriate representatives of physicians, review".

(b) USE OF MOST RECENT DATA IN GEOGRAPHIC ADJUSTMENT.—Section 1848(e)(1) (42 U.S.C. 1395w–4(e)(1)) is amended by adding at the end the following new subparagraph:

"(D) USE OF RECENT DATA.—In establishing indices and index values under this paragraph, the Secretary shall use the most recent data available relating to practice expenses, malpractice expenses, and physician work effort in different fee schedule areas.".

(c) DEADLINE FOR INITIAL REVIEW AND REVISION.—The Secretary of Health and Human Services shall first review and revise geographic adjustment factors under section 1848(e)(1)(C) of the Social Security Act by not later than January 1, 1995.

(d) REPORT ON REVIEW PROCESS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall study and report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives on—

(1) the data necessary to review and revise the indices established under section 1848(e)(1)(A) of the Social Security Act, including—

(A) the shares allocated to physicians' work effort, practice expenses (other than malpractice expenses), and malpractice expenses;

(B) the weights assigned to the input components of such shares; and

(C) the index values assigned to such components;

(2) any limitations on the availability of data necessary to review and revise such indices at least every three years;

(3) ways of addressing such limitations, with particular attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every three years; and

(4) the costs of developing more accurate and timely data.

SEC. 10105. EXTRA-BILLING LIMITS.

(a) ENFORCEMENT AND UNIFORM APPLICATION.—

(1) ENFORCEMENT.—Paragraph (1) of section 1848(g) (42 U.S.C. 1395w–4(g)) is amended to read as follows:

"(1) LIMITATION ON ACTUAL CHARGES.—

"(A) IN GENERAL.—In the case of a nonparticipating physician or nonparticipating supplier or other person (as defined in section 1842(i)(2)) who does not accept payment on an assignment-related basis for a physician's service furnished with respect to an individual enrolled under this part, the following rules apply:

"(i) APPLICATION OF LIMITING CHARGE.—No person may bill or collect an actual charge for the service in excess of the limiting charge described in paragraph (2) for such service.

"(ii) NO LIABILITY FOR EXCESS CHARGES.—No person is liable for payment of any amounts billed for the service in excess of such limiting charge.

"(iii) CORRECTION OF EXCESS CHARGES.—If such a physician, supplier, or other person bills, but does not collect, an actual charge for a service in violation of clause (i), the physician, supplier, or other person shall reduce on a timely basis the actual charge billed for the service to an amount not to exceed the limiting charge for the service.

"(iv) REFUND OF EXCESS COLLECTIONS.—If such a physician, supplier, or other person collects an actual charge for a service in violation of clause (i), the physician, supplier, or other person shall provide on a timely basis a refund to the individual charged in the amount by which the amount collected exceeded the limiting charge for the service. The amount of such a refund shall be reduced to the extent the individual has an outstanding balance owed by the individual to the physician.

"(B) SANCTIONS.—If a physician, supplier, or other person—

"(i) knowingly and willfully bills or collects for services in violation of subparagraph (A)(i) on a repeated basis,

"(ii) fails to comply with clause (iii) or (iv) of subparagraph (A) on a timely basis,

the Secretary may apply sanctions against the physician, supplier, or other person in accordance with paragraph (2) of section 1842(j). In applying this subparagraph, paragraph (4) of such section applies in the same manner as such paragraph applies to such section and any reference in such section to a physician is deemed also to include a eference to a supplier or other person under this subparagraph.

"(C) TIMELY BASIS.—For purposes of this paragraph, a correction of a bill for an excess charge or refund of an amount with respect to a violation of subparagraph (A)(i) in the case of a service is considered to be provided 'on a timely basis', if the reduction or refund is made not later than 30 days after the date the physician, supplier, or other

person is notified by the carrier under this part of such violation and of the requirements of subparagraph (A).".

(2) UNIFORM APPLICATION OF EXTRA-BILLING LIMITS TO PHYSICIANS' SERVICES.—

(A) IN GENERAL.—Section 1848(g)(2)(C) (42 U.S.C. 1395w-4(g)(2)(C)) is amended by inserting "or for nonparticipating suppliers or other persons" after "nonparticipating physicians".

(B) CONFORMING DEFINITION.—Section 1842(i)(2) (42 U.S.C. 1395u(i)(2)) is amended—

(i) by striking ", and the term" and inserting "; the term", and

(ii) by inserting before the period at the end the following: "; and the term 'nonparticipating supplier or other person' means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1))".

(3) ADDITIONAL CONFORMING AMENDMENTS.—Section 1848 (42 U.S.C. 1395w-4) is amended—

(A) in subsection (a)(3), by inserting "AND SUPPLIERS" after "PHYSICIANS", and by inserting "or a nonparticipating supplier or other person" after "nonparticipating physician" and by adding at the end the following: "In the case of physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3)) of a nonparticipating physician, supplier, or other person for which payment is made under this part on a basis other than the fee schedule amount, the payment shall be based on 95 percent of the payment basis for such services furnished by a participating physician, supplier, or other person.";

(B) in subsection (g)(1)(A), as amended by subsection (a), in the matter before clause (i), by inserting "(including services which the Secretary excludes pursuant to subsection (j)(3))" after "a physician's service";

(C) in subsection (g)(2)(D), by inserting "(or, if payment under this part is made on a basis other than the fee schedule under this section, 95 percent of the other payment basis)" after "subsection (a)";

(D) in subsection (g)(3)(B)—

(i) by inserting after the first sentence the following: " No person is liable for payment of any amounts billed for such a service in violation of the previous sentence.", and

(ii) in the last sentence, by striking "previous sentence" and inserting "first sentence";

(E) in subsection (h)—

(i) by inserting "or nonparticipating supplier or other person furnishing physicians' services (as defined in section 1848(j)(3))" after "physician" the first place it appears,

(ii) by inserting ", supplier, or other person" after "physician" the second place it appears, and

(iii) by inserting ", suppliers, and other persons" after "physicians" the second place it appears; and

(F) in subsection (j)(3), by inserting ", except for purposes of subsections (a)(3), (g), and (h)" after "tests and".

(b) CLARIFICATION OF MANDATORY ASSIGNMENT RULES FOR CERTAIN PRACTITIONERS.—

(1) IN GENERAL.—Section 1842(b) (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:

"(19)(A) Payment for any service furnished by a practitioner described in subparagraph (C) and for which payment may be made under this part on a reasonable charge or fee schedule basis may only be made under this part on an assignment-related basis.

"(B) A practitioner described in subparagraph (C) or other person may not bill (or collect any amount from) the individual or another person for any service described in subparagraph (A), except for deductible and coinsurance amounts applicable under this part. No person is liable for payment of any amounts billed for such a service in violation of the previous sentence. If a practitioner or other person knowingly and willfully bills (or collects an amount) for such a service in violation of such sentence, the Secretary may apply sanctions against the practitioner or other person in the same manner as the Secretary may apply sanctions against a physician in accordance with section 1842(j)(2) in the same manner as such section applies with respect to a physician. Paragraph (4) of section 1842(j) shall apply in this subparagraph in the same manner as such paragraph applies to such section.

"(C) A practitioner described in this subparagraph is any of the following:

"(i) A physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa)(5)).

"(ii) A certified registered nurse anesthetist (as defined in section 1861(bb)(2)).

"(iii) A certified nurse-midwife (as defined in section 1861(gg)(2)).

"(iv) A clinical social worker (as defined in section 1861(hh)(1)).

"(v) A clinical psychologist (as defined by the Secretary for purposes of section 1861(ii)).

"(D) For purposes of this paragraph, a service furnished by a practitioner described in subparagraph (C) includes any services and supplies furnished as incident to the service as would otherwise be covered under this part if furnished by a physician or as incident to a physician's service.".

(2) CONFORMING AMENDMENTS.—

(A) Section 1833 (42 U.S.C. 1395l) is amended—

(i) in subsection (l)(5), by striking subparagraph (B) of subsection (l)(5) and redesignating subparagraph (C) as subparagraph (B);

(ii) by striking subsection (p); and

(iii) in subsection (r), by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(B) Section 1842(b)(12) (42 U.S.C. 1395u(b)(12)) is amended by striking subparagraph (C).

(c) INFORMATION ON EXTRA-BILLING LIMITS.—

(1) PART OF EXPLANATION OF MEDICARE BENEFITS.—Section 1842(h)(7) (42 U.S.C. 1395u(h)(7)) is amended—

(A) by striking "and" at the end of subparagraph (B),

(B) in subparagraph (C), by striking "shall include" and by striking the period at the end and inserting ", and", and

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

"(D) in the case of services for which the billed amount exceeds the limiting charge imposed under section 1848(g), information regarding such applicable limiting charge (including information concerning the right to a refund under section 1848(g)(1)(D)).".

(2) DETERMINATIONS BY CARRIERS.—Subparagraph (G) of section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended to read as follows:

"(G) will, for a service that is furnished with respect to an individual enrolled under this part, that is not paid on an assignment-related basis, and that is subject to a limiting charge under section 1848(g)—

"(i) determine, prior to making payment, whether the amount billed for such service exceeds the limiting charge applicable under section 1848(g)(2);

"(ii) notify the physician, supplier, or other person periodically (but not less often than once every 30 days) of determinations that amounts billed exceeded such applicable limiting charges; and

"(iii) provide for prompt response to inquiries of physicians, suppliers, and other persons concerning the accuracy of such limiting charges for their services;".

(d) REPORT ON CHARGES IN EXCESS OF LIMITING CHARGE.—Section 1848(g)(6)(B) (42 U.S.C. 1395w-4(g)(6)(B)) is amended by inserting "the extent to which actual charges exceed limiting charges, the number and types of services involved, and the average amount of excess charges and" after "report to the Congress".

(e) MISCELLANEOUS AND TECHNICAL AMENDMENTS.—Section 1833 (42 U.S.C. 1395l) is amended—

(1) in subsection (a)(1), as amended by section 10149(e)(2) of this subtitle—

(A) by striking "and" before "(O)", and

(B) by inserting before the semicolon at the end the following: ", and (P) with respect to services described in clauses (i), (ii) and (iv) of section 1861(s)(2)(K), the amounts paid are subject to the provisions of section 1842(b)(12)"; and

(2) in subsection (h)(5)(D)—

(A) by striking "paragraphs (2) and (3)" and by inserting "paragraph (2)", and

(B) by adding at the end the following: "Paragraph (4) of such section shall apply in this subparagraph in the same manner as such paragraph applies to such section.".

(f) EFFECTIVE DATES.—

(1) ENFORCEMENT AND UNIFORM APPLICATION; MISCELLANEOUS AND TECHNICAL AMENDMENTS.—The amendments made by subsections (a) and (e) shall apply to services furnished on or after the date of the enactment of this Act; except that the

amendments made by subsection (a) shall not apply to services of a nonparticipating supplier or other person furnished before January 1, 1993.

(2) PRACTITIONERS.—The amendments made by subsection (b) shall apply to services furnished on or after January 1, 1993.

(3) EOMBs.—The amendments made by subsection (c)(1) shall apply to explanations of benefits provided on or after January 1, 1993, except that the requirement for including information concerning the right to a refund shall apply to explanations of benefits provided on or after July 1, 1993.

(4) CARRIER DETERMINATIONS.—The amendments made by subsection (c)(2) shall apply to contracts as of January 1, 1993.

(5) REPORT.—The amendment made by subsection (d) shall apply to reports for years beginning with 1993.

SEC. 10106. RELATIVE VALUES FOR PEDIATRIC SERVICES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall fully develop, by not later than December 31, 1993, relative values for the full range of pediatric physicians' services which are consistent with the relative values developed for other physicians' services under section 1848(c) of the Social Security Act. In developing such values, the Secretary shall conduct such refinements as may be necessary to produce appropriate estimates for such relative values.

(b) STUDY.—

(1) IN GENERAL.—The Secretary shall conduct a study of the relative values for pediatric and other services to determine whether there are significant variations in the resources used in providing similar services to different populations. In conducting such study, the Secretary shall consult with appropriate organizations representing pediatricians and other physicians.

(2) REPORT.—Not later than January 1, 1994, the Secretary shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include any appropriate recommendations regarding needed changes in coding or other payment policies to ensure that payments for pediatric services appropriately reflect the resources required to provide these services.

SEC. 10107. ANTIGENS UNDER PHYSICIAN FEE SCHEDULE.

(a) IN GENERAL.—Section 1848(j)(3) (42 U.S.C. 1395w÷4(j)(3)) is amended by inserting "(2)(G)," after "(2)(D),".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 10108. ADMINISTRATION OF CLAIMS RELATING TO PHYSICIANS' SERVICES.

(a) LIMITATION ON CARRIER USER FEES.—Section 1842(c) (42 U.S.C. 1395u(c)) is amended by adding at the end the following new paragraph:

"(4) Neither a carrier nor the Secretary may impose a fee under this title—

"(A) for the filing of claims related to physicians' services,

"(B) for an error in filing a claim relating to physicians' services or for such a claim which is denied,

"(C) for any appeal under this title with respect to physicians' services,

"(D) for applying for (or obtaining) a unique identifier under subsection (r), or

"(E) for responding to inquiries respecting physicians' services or for providing information with respect to medical review of such services.".

(b) CLARIFICATION OF PERMISSIBLE SUBSTITUTE BILLING ARRANGEMENTS.—

(1) IN GENERAL.—Clause (D) of section 1842(b)(6) (42 U.S.C. 1395u(b)(6)) is amended to read as follows: "(D) payment may be made to a physician for physicians' services (and services furnished incident to such services) furnished by a second physician to patients of the first physician if (i) the first physician is unavailable to provide the services; (ii) the services are furnished pursuant to an arrangement between the two physicians that (I) is informal and reciprocal, or (II) involves per diem or other fee-for-time compensation for such services; (iii) the services are not provided by the second physician over a continuous period of more than 60 days; and (iv) the claim form submitted to the carrier for such services includes the second physician's unique identifier (provided under the system established under subsection (r)) and indicates that the claim meets the requirements of this clause for payment to the first physician".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

SEC. 10109. MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) OVERVALUED PROCEDURES (SECTION 4101 OF OBRA-1990).—(1) Section 1842(b)(16)(B)(iii) (42 U.S.C. 1395u(b)(16)(B)(iii)) is amended—

(A) by striking ", simple and subcutaneous",

(B) by striking "; small" and inserting "and small",

(C) by striking "treatments;" the first place it appears and inserting "and",

(D) by striking "lobectomy;",

(E) by striking "enterectomy; colectomy; cholecystectomy;",

(F) by striking "; transurerethral resection" and inserting "and resection", and

(G) by striking "sacral laminectomy;".

(2) Section 4101(b)(2) of OBRA-1990 is amended—

(A) in the matter before subparagraph (A), by striking "1842(b)(16)" and inserting "1842(b)(16)(B)", and

(B) in subparagraph (B)—

(i) by striking ", simple and subcutaneous",

(ii) by striking "(HCPCS codes 19160 and 19162)" and inserting "(HCPCS code 19160)", and

(iii) by striking all that follows "(HCPCS codes 92250" and inserting "and 92260).".

(b) RADIOLOGY SERVICES (SECTION 4102 OF OBRA-1990).—(1) Section 1834(b)(4) (42 U.S.C. 1395m(b)(4)) is amended by redesignat-

ing subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively.

(2) Section 1834(b)(4)(D) (42 U.S.C. 1395m(b)(4)(D)) is amended—

(A) in the matter before clause (i), by striking "shall be determined as follows:" and inserting "shall, subject to clause (vii), be reduced to the adjusted conversion factor for the locality determined as follows:",

(B) in clause (iv), by striking "LOCAL ADJUSTMENT.—Subject to clause (vii), the conversion factor to be applied to" and inserting "ADJUSTED CONVERSION FACTOR.—The adjusted conversion factor for",

(C) in clause (vii), by striking "under this subparagraph", and

(D) in clause (vii), by inserting "reduced under this subparagraph by" after "shall not be".

(3) Section 4102(c)(2) of OBRA–1990 is amended by striking "radiology services" and all that follows and inserting "nuclear medicine services".

(4) Section 4102(d) of OBRA–1990 is amended by striking "new paragraph" and inserting "new subparagraph".

(5) Section 1834(b)(4)(E) (42 U.S.C. 1395m(b)(4)(E)) is amended by inserting "RULE FOR CERTAIN SCANNING SERVICES.—" after "(E)".

(6) Section 1848(a)(2)(D)(iii) (42 U.S.C. 1395w–4(a)(2)(D)(iii)) is amended by striking "that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989" and by striking "provided under such section" and inserting "provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989".

(c) ANESTHESIA SERVICES (SECTION 4103 OF OBRA–1990).—(1) Section 4103(a) of OBRA–1990 is amended by striking "REDUCTION IN FEE SCHEDULE" and inserting "REDUCTION IN PREVAILING CHARGES".

(2) Section 1842(q)(1)(B) (42 U.S.C. 1395u(q)(1)(B)) is amended—

(A) in the matter before clause (i), by striking "shall be determined as follows:" and inserting "shall, subject to clause (iv), be reduced to the adjusted prevailing charge conversion factor for the locality determined as follows:", and

(B) in clause (iii), by striking "Subject to clause (iv), the prevailing charge conversion factor to be applied in" and inserting "The adjusted prevailing charge conversion factor for".

(d) ASSISTANTS AT SURGERY (SECTION 4107 OF OBRA–1990).—(1) Section 4107(c) of OBRA–1990 is amended by inserting "(a)(1)" after "subsection".

(2) Section 4107(a)(2) of OBRA–1990 is amended by adding at the end the following: "In applying section 1848(g)(2)(D) of the Social Security Act for services of an assistant-at-surgery furnished during 1991, the recognized payment amount shall not exceed the maximum amount specified under section 1848(i)(2)(A) of such Act (as applied under this paragraph in such year).".

(e) TECHNICAL COMPONENTS OF DIAGNOSTIC SERVICES (SECTION 4108 OF OBRA–1990).—Section 1842(b) (42 U.S.C. 1395u(b)) is amended by redesignating paragraph (18), as added by section 4108(a) of OBRA–1990, as paragraph (17) and, in such paragraph, by inserting ", tests specified in paragraph (14)(C)(i)," after "diagnostic laboratory tests".

(f) STATEWIDE FEE SCHEDULES (SECTION 4117 OF OBRA-1990).—Section 4117 of OBRA-1990 is amended—

(1) in subsection (a)—

(A) by striking "IN GENERAL.—", and

(B) by striking ", if the" and all that follows through "1991, "; and

(2) by striking subsections (b), (c), and (d).

(g) STUDY OF AGGREGATION RULE FOR CLAIMS OF SIMILAR PHYSICIAN SERVICES (SECTION 4113 OF OBRA-1990).—Section 4113 of OBRA-1990 is amended—

(1) by inserting "of the Social Security Act" after "1869(b)(2)"; and

(2) by striking "December 31, 1992" and inserting "December 31, 1993".

(h) OTHER MISCELLANEOUS AND TECHNICAL AMENDMENTS.—(1) The heading of section 1834(f) (42 U.S.C. 1395m(f)) is amended by striking "FISCAL YEAR".

(2)(A) Section 4105(b) of OBRA-1990 is amended—

(i) in paragraph (2), by striking "amendments" and inserting "amendment", and

(ii) in paragraph (3), by striking "amendments made by paragraphs (1) and (2)" and inserting "amendment made by paragraph (1)".

(B) Section 1848(f)(2)(C) (42 U.S.C. 1395w-4(f)(2)(C)) is amended by inserting "PERFORMANCE STANDARD RATES OF INCREASE FOR FISCAL YEAR 1991.—" after "(C)".

(C) Section 4105(d) of OBRA-1990 is amended by inserting "PUBLICATION OF PERFORMANCE STANDARD RATES.—" after "(d)".

(3) Section 1842(b)(4)(F) (42 U.S.C. 1395u(b)(4)(F)) is amended—

(A) in clause (i), by striking "prevailing charge" the first place it appears and inserting "customary charge"; and

(B) in clause (ii)(III), by striking "second, third, and fourth" and inserting "first, second, and third".

(4) Section 1842(b)(4)(F)(ii)(I) (42 U.S.C. 1395u(b)(4)(F)(ii)(I)) is amended by striking "respiratory therapist,".

(5) Section 4106(c) of OBRA-1990 is amended by inserting "of the Social Security Act" after "1848(d)(1)(B)".

(6) Section 4114 of OBRA-1990 is amended by striking "patients" the second place it appears.

(7) Section 1848(e)(1)(C) (42 U.S.C. 1395w-4(e)(1)(C)) is amended by inserting "date of the" after "since the".

(8) Section 4118(f)(1)(D) of OBRA-1990 is amended by striking "is amended".

(9) Section 4118(f)(1)(N)(ii) of OBRA-1990 is amended by striking "subsection (f)(5)(A)" and inserting "subsection (f)(5)(A))".

(10) Section 1845(e) (42 U.S.C. 1395w-1(e)) is amended—

(A) by striking paragraph (2); and

(B) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4).

(11) Section 4118(j)(2) of OBRA-1990 is amended by striking "In section" and inserting "Section".

(12)(A) Section 1848(i)(3) (42 U.S.C. 1395w-4(i)(3)) is amended by striking the space before the period at the end.

(B) Section 1834(a)(10)(B) (42 U.S.C. 1395m(a)(10)(B)) is amended by striking "as such provisions apply to physicians' services and physicians and a reasonable charge under section 1842(b)".

(i) EFFECTIVE DATE.—The amendments made by this section and the provisions of this section shall take effect as if included in the enactment of OBRA-1990.

PART 2—AMBULATORY SURGICAL SERVICES

SEC. 10111. EYE OR EYE AND EAR HOSPITALS.

(a) IN GENERAL.—Section 1833(i) (42 U.S.C. 1395l(i)) is amended—

(1) in subparagraph (B)(ii)—

(A) by striking "the last sentence of this clause" and inserting "paragraph (4)", and

(B) by striking the last sentence; and

(2) by inserting after paragraph (3) the following new paragraph:

"(4)(A) In the case of a hospital that—

"(i) makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary),

"(ii) receives more than 30 percent of its total revenues from outpatient services, and

"(iii) on October 1, 1987—

"(I) was an eye specialty hospital or an eye and ear specialty hospital, or

"(II) was operated as an eye or eye and ear unit (as defined in subparagraph (B)) of a general acute care hospital which, on the date of the application described in clause (i), operates less than 20 percent of the beds that the hospital operated on October 1, 1987, and has sold or otherwise disposed of a substantial portion of the hospital's other acute care operations,

the cost proportion and ASC proportion in effect under subclauses (I) and (II) of paragraph (2)(B)(ii) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995.

"(B) For purposes of this subparagraph (A)(iii)(II), the term 'eye or eye and ear unit' means a physically separate or distinct unit containing separate surgical suites devoted solely to eye or eye and ear services.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1993.

SEC. 10112. EXTENSION OF CAP ON PAYMENTS FOR INTRAOCULAR LENSES.

(a) IN GENERAL.—Section 4151(c)(3) of OBRA-1990 is amended by striking "December 31, 1992" and inserting "December 31, 1994".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as if included in the enactment of OBRA-1990.

SEC. 10113. MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) PAYMENT AMOUNTS FOR SERVICES FURNISHED IN AMBULATORY SURGICAL CENTERS.—(1)(A) Section 1833(i)(2)(A)(i) (42 U.S.C.

1395l(i)(2)(A)(i)) is amended by striking the comma at the end and inserting the following: ", as determined in accordance with a survey (based upon a representative sample of procedures and facilities) taken not later than July 1, 1993, and every 5 years thereafter, of the actual audited costs incurred by such centers in providing such services,".

(B) Section 1833(i)(2) (42 U.S.C. 1395l(i)(2)) is amended—

(i) in the second sentence of subparagraph (A) and the second sentence of subparagraph (B), by striking "and may be adjusted by the Secretary, when appropriate,"; and

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

"(C) Notwithstanding the second sentence of subparagraph (A) or the second sentence of subparagraph (B), if the Secretary has not updated amounts established under such subparagraphs with respect to facility services furnished during a fiscal year (beginning with fiscal year 1994), such amounts shall be increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with March of the preceding fiscal year.".

(C) The second sentence of section 1833(i)(1) (42 U.S.C. 1395l(i)(1)) is amended by striking the period and inserting the following: ", in consultation with appropriate trade and professional organizations.".

(2) Section 4151(c)(3) of OBRA–1990 is amended by striking "for the insertion of an intraocular lens" and inserting "for an intraocular lens inserted".

(b) ADJUSTMENTS TO PAYMENT AMOUNTS FOR NEW TECHNOLOGY INTRAOCULAR LENSES.—(1) Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall develop and implement a process under which interested parties may request review by the Secretary of the appropriateness of the reimbursement amount provided under section 1833(i)(2)(A)(iii) of the Social Security Act with respect to a class of new technology intraocular lenses. For purposes of the preceding sentence, an intraocular lens may not be treated as a new technology lens unless it has been approved by the Food and Drug Administration.

(2) In determining whether to provide an adjustment of payment with respect to a particular lens under paragraph (1), the Secretary shall take into account whether use of the lens is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

(3) The Secretary shall publish notice in the Federal Register from time to time (but no less often than once each year) of a list of the requests that the Secretary has received for review under this subsection, and shall provide for a 30-day comment period on the lenses that are the subjects of the requests contained in such notice. The Secretary shall publish a notice of his determinations with respect to intraocular lenses listed in the notice within 90 days after the close of the comment period.

(4) Any adjustment of a payment amount (or payment limit) made under this subsection shall become effective not later than 30

days after the date on which the notice with respect to the adjustment is published under paragraph (3).

(c) BLEND AMOUNTS FOR AMBULATORY SURGICAL CENTER PAYMENTS.—

(1) IN GENERAL.—Subclauses (I) and (II) of section 1833(i)(3)(B)(ii) (42 U.S.C. 1395l(i)(3)(B)(ii)) are each amended—

(A) by striking "for reporting" and inserting "for portions of cost reporting"; and

(B) by striking "and on or before" and inserting "and ending on or before".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of OBRA-1990.

PART 3—DURABLE MEDICAL EQUIPMENT

SEC. 10121. CERTIFICATION OF SUPPLIERS.

(a) REQUIREMENTS.—

(1) IN GENERAL.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(i) REQUIREMENTS FOR SUPPLIERS OF MEDICAL EQUIPMENT AND SUPPLIES.—

"(1) ISSUANCE AND RENEWAL OF SUPPLIER NUMBER.—

"(A) PAYMENT.—Except as provided in subparagraph (C), no payment may be made under this part after July 1, 1993, for items furnished by a supplier of medical equipment and supplies unless such supplier obtains (and renews at such intervals as the Secretary may require) a supplier number.

"(B) STANDARDS FOR POSSESSING A SUPPLIER NUMBER.—A supplier may not obtain a supplier number unless—

"(i) for medical equipment and supplies furnished on or after July 1, 1993, and on or before December 31, 1994, the supplier meets standards prescribed by the Secretary; and

"(ii) for medical equipment and supplies furnished on or after January 1, 1995, the supplier meets revised standards prescribed by the Secretary (in consultation with representatives of suppliers of medical equipment and supplies, carriers, and consumers) that shall include requirements that the supplier—

"(I) comply with all applicable State and Federal licensure and regulatory requirements;

"(II) maintain a physical facility on an appropriate site;

"(III) have proof of appropriate liability insurance; and

"(IV) meet such other requirements as the Secretary may specify.

"(C) EXCEPTION FOR ITEMS FURNISHED AS INCIDENT TO A PHYSICIAN'S SERVICE.—Subparagraph (A) shall not apply with respect to medical equipment and supplies furnished as an incident to a physician's service.

"(D) PROHIBITION AGAINST MULTIPLE SUPPLIER NUMBERS.—The Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control

"(E) PROHIBITION AGAINST DELEGATION OF SUPPLIER DETERMINATIONS.—The Secretary may not delegate (other than by contract under section 1842) the responsibility to determine whether suppliers meet the standards necessary to obtain a supplier number.

"(2) CERTIFICATES OF MEDICAL NECESSITY.—

"(A) STANDARDIZED CERTIFICATES.—Not later than July 1, 1993, the Secretary shall, in consultation with carriers under this part, develop one or more standardized certificates of medical necessity (as defined in subparagraph (C)) for medical equipment and supplies for which the Secretary determines that such a certificate is necessary.

"(B) PROHIBITION AGAINST DISTRIBUTION BY SUPPLIERS OF CERTIFICATES OF MEDICAL NECESSITY.—

"(i) IN GENERAL.—Except as provided in clause (ii), a supplier of medical equipment and supplies may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed certificates of medical necessity.

"(ii) EXCEPTION FOR CERTAIN BILLING INFORMATION.—Clause (i) shall not apply with respect to a certificate of medical necessity for any item that is not contained on the list of potentially overused items developed by the Secretary under subsection (a)(15)(A) to the extent that such certificate contains only information completed by the supplier of medical equipment and supplies identifying such supplier and the beneficiary to whom such medical equipment and supplies are furnished, a description of such medical equipment and supplies, any product code identifying such medical equipment and supplies, and any other administrative information (other than information relating to the beneficiary's medical condition) identified by the Secretary. In the event a supplier provides a certificate of medical necessity containing information permitted under this clause, such certificate shall also contain the fee schedule amount and the supplier's charge for the medical equipment or supplies being furnished prior to distribution of such certificate to the physician.

"(iii) PENALTY.—Any supplier of medical equipment and supplies who knowingly and willfully distributes a certificate of medical necessity in violation of clause (i) is subject to a civil money penalty in an amount not to exceed $1,000 for each such certificate of medical necessity so distributed. The provisions of section 1128A (other than subsections (a) and (b)) shall

apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1128A(a).

"(C) DEFINITION.—For purposes of this paragraph, the term 'certificate of medical necessity' means a form or other document containing information required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

"(3) COVERAGE AND REVIEW CRITERIA.—

"(A) DEVELOPMENT AND ESTABLISHMENT.—Not later than July 1, 1993, the Secretary, in consultation with representatives of suppliers of medical equipment and supplies, individuals enrolled under this part, and appropriate medical specialty societies, shall develop and establish uniform national coverage and utilization review criteria for 200 items of medical equipment and supplies selected in accordance with the standards described in subparagraph (B). The Secretary shall publish the criteria as part of the instructions provided to fiscal intermediaries and carriers under this part and no further publication, including publication in the Federal Register, shall be required.

"(B) STANDARDS FOR SELECTING ITEMS SUBJECT TO CRITERIA.—The Secretary may select an item for coverage under the criteria developed and established under subparagraph (A) if the Secretary finds that—

"(i) the item is frequently purchased or rented by beneficiaries;

"(ii) the item is frequently subject to a determination that such item is not medically necessary; or

"(iii) the coverage or utilization criteria applied to the item (as of the date of the enactment of this subsection) is not consistent among carriers.

"(C) ANNUAL REVIEW AND EXPANSION OF ITEMS SUBJECT TO CRITERIA.—The Secretary shall annually review the coverage and utilization of items of medical equipment and supplies to determine whether items not included among the items selected under subparagraph (A) should be made subject to uniform national coverage and utilization review criteria, and, if appropriate, shall develop and apply such criteria to such additional items.

"(4) DEFINITION.—The term 'medical equipment and supplies" means—

"(A) durable medical equipment (as defined in section 1861(n));

"(B) prosthetic devices (as described in section 1861(s)(8));

"(C) orthotics and prosthetics (as described in section 1861(s)(9));

"(D) surgical dressings (as described in section 1861(s)(5));

"(E) such other items as the Secretary may determine; and

"(F) for purposes of paragraphs (1) and (3)—

"(i) home dialysis supplies and equipment (as described in section 1861(s)(2)(F)), and

"(ii) immunosuppressive drugs (as described in section 1861(s)(2)(J)).".

(2) CONFORMING AMENDMENT.—Paragraph (16) of section 1834(a) (42 U.S.C. 1395m(a)) is repealed.

(b) REPORT ON EFFECT OF UNIFORM CRITERIA ON UTILIZATION OF ITEMS.—Not later than January 1, 1994, the Secretary shall submit a report to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate analyzing the impact of the uniform criteria established under section 1834(i)(3)(A) of the Social Security Act (as added by subsection (a)) on the utilization of items of medical equipment and supplies by individuals enrolled under part B of the medicare program.

(c) USE OF COVERED ITEMS BY DISABLED BENEFICIARIES.—

(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with representatives of suppliers of durable medical equipment under part B of the medicare program and individuals entitled to benefits under such program on the basis of disability, shall conduct a study of the effects of the methodology for determining payments for items of such equipment under such part on the ability of such individuals to obtain items of such equipment, including customized items.

(2) REPORT.—Not later than January 1, 1994, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report such recommendations as the Secretary considers appropriate to assure that disabled medicare beneficiaries have access to items of durable medical equipment.

(d) CRITERIA FOR TREATMENT OF ITEMS AS PROSTHETICS DEVICES OR ORTHOTICS AND PROSTHETICS.—Not later than July 1, 1993, the Secretary of Health and Human Services shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate describing prosthetic devices or orthotics and prosthetics covered under part B of the medicare program that do not require individualized or custom fitting and adjustment to be used by a patient. Such report shall include recommendations for an appropriate methodology for determining the amount of payment for such items under such program.

(e) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to items furnished (or certificates of medical necessity submitted) on or after January 1, 1993.

SEC. 10122. PROHIBITION AGAINST CARRIER FORUM SHOPPING.

(a) IN GENERAL.—Section 1834(a)(12) (42 U.S.C. 1395m(a)(12)) is amended to read as follows:

"(12) USE OF CARRIERS TO PROCESS CLAIMS.—

"(A) DESIGNATION OF REGIONAL CARRIERS.—The Secretary may designate, by regulation under section 1842, one carrier for one or more entire regions to process all claims within the region for covered items under this section.

"(B) PROHIBITION AGAINST CARRIER SHOPPING.—(i) No supplier of a covered item may present or cause to be presented a claim for payment under this part unless such claim is presented to the appropriate carrier.

"(ii) For purposes of clause (i), the term 'appropriate carrier' means the carrier having jurisdiction over the geographic area that includes the permanent residence of the patient to whom the item is furnished.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items furnished on or after July 1, 1993.

(c) CLARIFICATION OF AUTHORITY TO DESIGNATE CARRIERS FOR OTHER ITEMS AND SERVICES.—Nothing in this subsection or the amendment made by this subsection may be construed to restrict the authority of the Secretary of Health and Human Services to designate regional carriers or modify claims jurisdiction rules with respect to items or services under part B of the medicare program that are not covered items under section 1834(a) of the Social Security Act or prosthetic devices or orthotics and prosthetics under section 1834(h) of such Act.

SEC. 10123. RESTRICTIONS ON CERTAIN MARKETING AND SALES ACTIVITIES.

(a) PROHIBITING UNSOLICITED TELEPHONE CONTACTS FROM SUPPLIERS OF DURABLE MEDICAL EQUIPMENT TO MEDICARE BENEFICIARIES.—

(1) IN GENERAL.—Section 1834(a) (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

"(17) PROHIBITION AGAINST UNSOLICITED TELEPHONE CONTACTS BY SUPPLIERS.—

"(A) IN GENERAL.—A supplier of a covered item under this subsection may not contact an individual enrolled under this part by telephone regarding the furnishing of a covered item to the individual (other than a covered item the supplier has already furnished to the individual) unless—

"(i) the individual gives permission to the supplier to make contact by telephone for such purpose; or

"(ii) the supplier has furnished a covered item under this subsection to the individual during the 15-month period preceding the date on which the supplier contacts the individual for such purpose.

"(B) PROHIBITING PAYMENT FOR ITEMS FURNISHED SUBSEQUENT TO UNSOLICITED CONTACTS.—If a supplier knowingly contacts an individual in violation of subparagraph (A), no payment may be made under this part for any item subsequently furnished to the individual by the supplier.

"(C) EXCLUSION FROM PROGRAM FOR SUPPLIERS ENGAGING IN PATTERN OF UNSOLICITED CONTACTS.—If a supplier knowingly contacts individuals in violation of subparagraph (A) to such an extent that the supplier's conduct establishes a pattern of contacts in violation of such subparagraph, the Secretary shall exclude the supplier from participation in the programs under this Act, in accordance with

the procedures set forth in subsections (c), (f), and (g) of section 1128.".

(2) REQUIRING REFUND OF AMOUNTS COLLECTED FOR DISALLOWED ITEMS.—Section 1834(a) (42 U.S.C. 1395m(a)), as amended by paragraph (1), is amended by adding at the end the following new paragraph:

"(18) REFUND OF AMOUNTS COLLECTED FOR CERTAIN DISALLOWED ITEMS.—

"(A) IN GENERAL.—If a nonparticipating supplier furnishes to an individual enrolled under this part a covered item for which no payment may be made under this part by reason of paragraph (17)(B), the supplier shall refund on a timely basis to the patient (and shall be liable to the patient for) any amounts collected from the patient for the item, unless—

"(i) the supplier establishes that the supplier did not know and could not reasonably have been expected to know that payment may not be made for the item by reason of paragraph (17)(B), or

"(ii) before the item was furnished, the patient was informed that payment under this part may not be made for that item and the patient has agreed to pay for that item.

"(B) SANCTIONS.—If a supplier knowingly and willfully fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against the supplier in accordance with section 1842(j)(2).

"(C) NOTICE.—Each carrier with a contract in effect under this part with respect to suppliers of covered items shall send any notice of denial of payment for covered items by reason of paragraph (17)(B) and for which payment is not requested on an assignment-related basis to the supplier and the patient involved.

"(D) TIMELY BASIS DEFINED.—A refund under subparagraph (A) is considered to be on a timely basis only if—

"(i) in the case of a supplier who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the supplier receives a denial notice under subparagraph (C), or

"(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the supplier receives notice of an adverse determination on reconsideration or appeal.".

(b) CONFORMING AMENDMENT.—Section 1834(h)(3) (42 U.S.C. 1395m(h)(3)) is amended by striking "Paragraph (12)" and inserting "Paragraphs (12) and (17)".

SEC. 10124. KICKBACK CLARIFICATION.

(a) IN GENERAL.—Section 1128B(b)(3)(B) (42 U.S.C. 1320a-(b)(3)(B)) is amended by inserting before the semicolon "(except that in the case of a contract supply arrangement between any entity and a supplier of medical supplies and equipment (as defined in section 1834(i)(4), but not including items described in subparagraph (F) of

such section), such employment shall not be considered bona fide to the extent that it includes tasks of a clerical and cataloging nature in transmitting to suppliers assignment rights of individuals eligible for benefits under part B of title XVIII, or performance of warehousing or stock inventory functions)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to services furnished on or after January 1, 1993.

SEC. 10125. BENEFICIARY LIABILITY FOR NONCOVERED SERVICES.

(a) IN GENERAL.—Section 1879 (42 U.S.C. 1395pp) is amended by adding at the end the following new subsection:

"(h) If a supplier of medical equipment and supplies (as defined in section 1834(i)(4))—

"(1) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1834(i)(1);

"(2) furnishes an item or service to a beneficiary for which payment is denied in advance under section 1834(a)(15); or

"(3) furnishes an item or service to a beneficiary for which payment is denied under section 1862(a)(1);

any expenses incurred for items and services furnished to an individual by such a supplier on an unassigned basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of section 1834(a)(18) shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items or services furnished on or after July 1, 1993.

SEC. 10126. ADJUSTMENTS FOR INHERENT REASONABLENESS.

(a) ADJUSTMENTS MADE TO FINAL PAYMENT AMOUNTS.—Section 1834(a)(10)(B) (42 U.S.C. 1395m(a)(10)(B)) is amended by adding at the end the following: "In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable.".

(b) ADJUSTMENT REQUIRED FOR CERTAIN ITEMS.—

(1) IN GENERAL.—In accordance with section 1834(a)(10)(B) of the Social Security Act (as amended by subsection (a)), the Secretary of Health and Human Services shall determine whether the payment amounts for the items described in paragraph (2) are not inherently reasonable, and shall adjust such amounts in accordance with such section if the amounts are not inherently reasonable.

(2) ITEMS DESCRIBED.—The items referred to in paragraph (1) are decubitus care equipment, transcutaneous electrical nerve stimulators, and any other items considered appropriate by the Secretary.

SEC. 10127. PAYMENT FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1993.

In determining the amount of payment under part B of title XVIII of the Social Security Act during 1993, the charges determined to be reasonable with respect to parenteral and enteral nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1992.

SEC. 10128. TREATMENT OF NEBULIZERS AND ASPIRATORS.

(a) IN GENERAL.—Section 1834(a)(3)(A) (42 U.S.C. 1395m(a)(3)(A)) is amended by striking "ventilators, aspirators, IPPB machines, and nebulizers" and inserting "ventilators and IPPB machines".

(b) PAYMENT FOR ACCESSORIES RELATING TO NEBULIZERS AND ASPIRATORS.—Section 1834(a) (42 U.S.C. 1395m(a)), as amended by section 10121(a)(2) of this subtitle, is amended by inserting after paragraph (15) the following new paragraph:

"(16) PAYMENT FOR ACCESSORIES RELATING TO NEBULIZERS AND ASPIRATORS.—In the case of accessories to be used in conjunction with a nebulizer or aspirator for which payment is made under this subsection, payment shall be made in accordance with paragraph (2) of this subsection.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished on or after January 1, 1993.

SEC. 10129. PAYMENT FOR OSTOMY SUPPLIES, TRACHEOSTOMY SUPPLIES, UROLOGICALS, AND SURGICAL DRESSINGS.

(a) OSTOMY SUPPLIES, TRACHEOSTOMY SUPPLIES, AND UROLOGICALS.—

(1) IN GENERAL.—Section 1834(h)(1) (42 U.S.C. 1395m(h)(1)) is amended by adding at the end the following new subparagraph:

"(E) EXCEPTION FOR CERTAIN ITEMS.—Payment for ostomy supplies, tracheostomy supplies, and urologicals shall be made in accordance with subparagraphs (B) and (C) of section 1834(a)(2).".

(2) CONFORMING AMENDMENT.—Section 1834(h)(1)(B) (42 U.S.C. 1395m(h)(1)(B)) is amended by striking "subparagraph (C)," and inserting "subparagraphs (C) and (E),".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to items furnished on or after January 1, 1993.

(b) SURGICAL DRESSINGS.—

(1) IN GENERAL.—Section 1834 (42 U.S.C. 1395m), as amended by section 10121(a) of this part, is amended by adding at the end the following new subsection:

"(j) PAYMENT FOR SURGICAL DRESSINGS.—

"(1) IN GENERAL.—Payment under this subsection for surgical dressings (described in section 1861(s)(5)) shall be made in a lump sum amount for the purchase of the item in an amount equal to 80 percent of the lesser of—

"(A) the actual charge for the item; or

"(B) a payment amount determined in accordance with the methodology described in subparagraphs (B) and (C) of subsection (a)(2) (except that in applying such methodology,

the national limited payment amount referred to in such subparagraphs shall be initially computed based on local payment amounts using average reasonable charges for the six-month period ending June 30, 1992, increased by the covered item update described in such subsection for 1993)

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to surgical dressings that are—

"(A) furnished as an incident to a physician's professional service; or

"(B) furnished by a home health agency.".

(2) CONFORMING AMENDMENT.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)), as amended by sections 10149(e)(2) and 10105(e)(1), is amended—

(A) by striking "and" before "(P)", and

(B) by inserting before the semicolon at the end the following: ", and (Q) with respect to surgical dressings, the amounts paid shall be the amounts determined under section 1834(j);".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to items furnished on or after July 1, 1993.

SEC. 10120. PAYMENTS FOR TENS DEVICES.

(a) IN GENERAL.—Section 1834(a)(1)(D) (42 U.S.C. 1395m(a)(1)(D)) is amended by striking "15 percent" the second place it appears and inserting "45 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items furnished on or after January 1, 1993.

SEC. 10121. MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) UPDATES TO PAYMENT AMOUNTS.—Subparagraph (A) of section 1834(a)(14) (42 U.S.C. 1395m(a)(14)) is amended to read as follows:

"(A) for 1991 and 1992, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced by 1 percentage point; and".

(b) TREATMENT OF POTENTIALLY OVERUSED ITEMS AND ADVANCED DETERMINATIONS OF COVERAGE.—(1) Effective on the date of the enactment of this Act, section 1834(a)(15) (42 U.S.C. 1395m(a)(15)) is amended to read as follows:

"(15) SPECIAL TREATMENT FOR POTENTIALLY OVERUSED ITEMS.—

"(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that are potentially overused, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, motorized scooters, decubitus care mattresses, and any such other item determined by the Secretary to be potentially overused on the basis of any of the following criteria—

"(i) the item is marketed directly to potential patients;

"(ii) the item is marketed with an offer to potential patients to waive the costs of coinsurance associated

with the item or is marketed as being available at no cost to policyholders of a medicare supplemental policy (as defined in section 1882(g)(1));

"(iii) the item has been subject to a consistent pattern of overutilization; or

"(iv) a high proportion of claims for payment for such item under this part may not be made because of the application of section 1862(a)(1).

"(B) ITEMS SUBJECT TO SPECIAL CARRIER SCRUTINY.—Payment may not be made under this part for any item contained in the list developed by the Secretary under subparagraph (A) unless the carrier has subjected the claim for payment for the item to special scrutiny or has followed the procedures described in paragraph (11)(C) with respect to the item.".

(2) Effective January 1, 1993, section 1834(a)(11) (42 U.S.C. 1395m(a)) is amended by adding at the end the following new subparagraph:

"(C) CARRIER DETERMINATIONS FOR CERTAIN ITEMS IN ADVANCE.—A carrier shall determine in advance whether payment for an item may not be made under this subsection because of the application of section 1862(a)(1) if—

"(i) the item is a customized item (other than inexpensive items specified by the Secretary); or

"(ii) the item is a specified covered item under subparagraph (B).".

(3) Effective for standards applied for contract years beginning after the date of the enactment of this Act, section 1842(c) (42 U.S.C. 1395u(c)), as amended by section 10108(a) of this subtitle, is amended by adding at the end the following new paragraph:

"(5) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall require the carrier to meet criteria developed by the Secretary to measure the timeliness of carrier responses to requests for payment of items described in section 1834(a)(11)(C).".

(4) Section 1834(h)(3) (42 U.S.C. 1395m(h)(3)) is amended by striking "paragraph (10) and paragraph (11)" and inserting "paragraphs (10) and (11)".

(c) STUDY OF VARIATIONS IN DURABLE MEDICAL EQUIPMENT SUPPLIER COSTS.—

(1) COLLECTION AND ANALYSIS OF SUPPLIER COST DATA.—The Administration of the Health Care Financing Administration shall, in consultation with appropriate organizations, collect data on supplier costs of durable medical equipment for which payment may be made under part B of the medicare program, and shall analyze such data to determine the proportions of such costs attributable to the service and product components of furnishing such equipment and the extent to which such proportions vary by type of equipment and by the geographic region in which the supplier is located.

(2) DEVELOPMENT OF GEOGRAPHIC ADJUSTMENT INDEX; REPORTS.—Not later than January 1, 1994—

(A) the Administrator shall submit a report to the Committees on Energy and Commerce and Ways and Means

of the House of Representatives and the Committee on Finance of the Senate on the data collected and the analysis conducted under paragraph (1), and shall include in such report the Administrator's recommendations for a geographic cost adjustment index for suppliers of durable medical equipment under the medicare program and an analysis of the impact of such proposed index on payments under the medicare program; and

(B) the Comptroller General shall submit a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate analyzing on a geographic basis the supplier costs of durable medical equipment under the medicare program.

(d) OXYGEN RETESTING.—Section 1834(a)(5)(E) (42 U.S.C. 1395m(a)(5)(E)) is amended by striking "55" and inserting "56".

(e) OTHER MISCELLANEOUS AND TECHNICAL AMENDMENTS.—(1) Section 4152(a)(3) of OBRA 1990 is amended by striking "amendment made by subsection (a)" and inserting "amendments made by this subsection".

(2) Section 4152(c)(2) of OBRA 1990 is amended by striking "1395m(a)(7)(A)" and inserting "1395m(a)(7)".

(3) Section 1834(a)(7)(A)(iii)(II) (42 U.S.C. 1395m(a)(7)(A)(iii)(II)) is amended by striking "clause (v)" and inserting "clause (vi)".

(4) Section 1834(a)(7)(C)(i) (42 U.S.C. 1395m(a)(7)(C)(i)) is amended by striking "or paragraph (3)".

(5) Section 1834(a)(3) (42 U.S.C. 1395m(a)(3)) is amended by striking subparagraph (D).

(6) Section 4153(c)(1) of OBRA 1990 is amended by striking "1834(a)" and inserting "1834(h)".

(7) Section 4153(d)(2) of OBRA 1990 is amended by striking "Reconiliation" and inserting "Reconciliation".

(8)(A) Section 1834(a) (42 U.S.C. 1395m(a)) is amended by striking paragraph (6).

(B) Section 1834(a) (42 U.S.C. 1395m(a)) is amended—

(i) in subparagraphs (A) and (B) of paragraph (1), by striking "(2) through (7)" each place it appears and inserting "(2) through (5) and (7)";

(ii) in paragraph (7), by striking "(2) through (6)" and inserting "(2) through (5)";

(iii) in paragraph (8), by striking "paragraphs (6) and (7)" each place it appears in the matter preceding subparagraph (A) and in subparagraph (C) and inserting "paragraph (7)"; and

(iv) in paragraph (8)(A)(i), by striking "described—" and all that follows and inserting "described in paragraph (7) equal to the average of the purchase prices on the claims submitted on an assignment-related basis for the unused item supplied during the 6-month period ending with December 1986.".

(9) The amendments made by this subsection shall take effect as if included in the enactment of OBRA 1990.

PART 4—OTHER PROVISIONS

SEC. 10141. PAYMENT FOR MEDICALLY DIRECTED CERTIFIED REGISTERED NURSE ANESTHETIST SERVICES.

(a) IN GENERAL.—Section 1833(l)(4)(B) (1395l(l)(4)(B)) is amended to read as follows:

"(B) Except as provided in subparagraph (D), the conversion factor used to determine the amount paid under the fee schedule under this subsection for services furnished by a certified registered nurse anesthetist who is medically directed—

"(i) in a year after 1992 and before 1997, shall be $10.75, or

"(ii) in a subsequent calendar year, shall be the previous year's conversion factor increased by the update determined under section 1848(d)(3) for physician anesthesia services for that year.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1993.

SEC. 10142. EXTENSION OF ALZHEIMER'S DISEASE DEMONSTRATION.

Section 9342 of OBRA 1986, as amended by section 4164(a)(2) of OBRA 1990, is amended—

(1) in subsection (c)(1), by striking "4 years" and inserting "5 years"; and

(2) in subsection (f), —

(A) by striking "$55,000,000" and inserting "$58,000,000", and

(B) by striking "$3,000,000" and inserting "$5,000,000".

SEC. 10143. PART B LATE ENROLLMENT PENALTY.

(a) LIMITATION ON MEDICARE PART B LATE ENROLLMENT PENALTY.—

(1) IN GENERAL.—Section 1839 (42 U.S.C. 1395r) is amended by adding at the end the following new subsection:

"(g) The percent increase in premiums under subsection (b) due to late enrollment under this part shall not exceed 25 percent in the case of an individual who is annuitant described in subparagraph (A) or (B) of section 8901(3) of title 5, United States Code, for a month if—

"(1) during the individual's initial enrollment period under section 1837(d)—

"(A) the individual was enrolled in a group health plan (as defined in section 1862(b)(1)(A)(v)) that provided coverage of items and services for which payment may be made under this part, and

"(B) the individual elected not to enroll (or to be deemed enrolled) under this section, and

"(2) due to a change of coverage under such plan, there is no coverage during the month under such plan with respect to items and services for which payment may be made under this part unless the individual is enrolled under this part.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to premiums for months beginning with January 1992.

(b) PAYMENT OF PART B PREMIUM LATE ENROLLMENT PENALTIES BY STATES..—Section 1839 (42 U.S.C. 1395r), as amended by

subsection (a), is further amended by adding at the end the following new subsection:

"(h)(1) Upon the request of a State, the Secretary may enter into an agreement with the State under which the State agrees to pay on a quarterly or other periodic basis to the Secretary (to be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund) an amount equal to the amount of the part B late enrollment premium increases with respect to the premiums for eligible individuals (as defined in paragraph (3)(A)).

"(2) No part B late enrollment premium increase shall apply to an eligible individual for premiums for months for which the amount of such an increase is payable under an agreement under paragraph (1).

"(3) In this subsection:

"(A) The term 'eligible individual' means an individual who is enrolled under this part B and who is within a class of individuals specified in the agreement under paragraph (1).

"(B) The term 'part B late enrollment premium increase' means any increase in a premium as a result of the application of subsection (b).".

SEC. 10144. ORAL CANCER DRUGS.

(a) COVERAGE OF CERTAIN SELF-ADMINISTERED ANTICANCER DRUGS.—Section 1861(s)(2) (42 U.S.C. 1395(s)(2)), as amended by section 10149(f)(8)(B) of this subtitle, is amended—

(1) by striking "and" at the end of subparagraph (N);

(2) by adding "and" at the end of subparagraph (O); and

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

"(P) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an anticancer chemotherapeutic agent for a given indication, and containing an active ingredient (or ingredients), which is the same indication and active ingredient (or ingredients) as a drug which the carrier determines would be covered pursuant to subparagraph (A) or (B) if the drug could not be self-administered;".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished on or after January 1, 1993.

SEC. 10145. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

(a) SERVICES DEFINED.—Section 1861 (42 U.S.C. 1395x), as amended by section 10149(f)(8)(E) of this subtitle, is amended by inserting after subsection (kk) the following new subsection:

"Speech-Language Pathology Services; Audiology Services

"(ll)(1) The term 'speech-language pathology services' means such speech, language, and related function assessment and rehabilitation services furnished by a qualified speech-language pathologist as the speech-language pathologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician.

"(2) The term 'audiology services' means such hearing and balance assessment services furnished by a qualified audiologist as the

audiologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law).

"(3) In this subsection:

"(A) The term 'qualified speech-language pathologist' means an individual with a master's or doctoral degree in speech-language pathology who has performed not less than 9 months of supervised full-time speech-language pathology services after obtaining such degree and who—

"(i) is licensed (or is otherwise certified) as a speech-language pathologist by the State in which the individual furnishes such services, or

"(ii) in the case of an individual who furnishes services in a State which does not provide for the licensing (or other form of certification) of speech-language pathologists, has successfully completed a national clinical competency examination in speech-language pathology approved by the Secretary.

"(B) The term 'qualified audiologist' means an individual with a master's or doctoral degree in audiology who has performed not less than 9 months of supervised full-time audiology services after obtaining such degree and who—

"(i) is licensed (or is otherwise certified) as an audiologist by the State in which the individual furnishes such services, or

"(ii) in the case of an individual who furnishes services in a State which does not provide for the licensing (or other form of certification) of audiologists, has successfully completed a national clinical competency examination in audiology approved by the Secretary.".

(b) CONFORMING AMENDMENTS RELATING TO MEDICARE TREATMENT OF SPEECH AND LANGUAGE SERVICES.—

(1) EXTENDED CARE SERVICES.—Section 1861(h)(3) (42 U.S.C. 1395x(h)(3)) is amended by striking ", occupational, or speech therapy" and inserting "or occupational therapy or speech-language pathology services".

(2) HOME HEALTH SERVICES.—Section 1861(m)(2) (42 U.S.C. 1395x(m)(2)) is amended by striking ", occupational, or speech therapy" and inserting "or occupational therapy or speech-language pathology services".

(3) OUTPATIENT PHYSICAL THERAPY SERVICES.—The fourth sentence of section 1861(p) (42 U.S.C. 1395x(p)) is amended by striking "speech pathology services" and inserting "speech-language pathology services".

(4) COMPREHENSIVE OUTPATIENT REHABILITATION FACILITY SERVICES.—Section 1861(cc)(1)(B) (42 U.S.C. 1395x(cc)(1)(B)) is amended by striking "speech pathology services" and inserting "speech-language pathology services".

(5) HOSPICE CARE.—Section 1861(dd)(1)(B) (42 U.S.C. 1395x(dd)(1)(B)) is amended by striking "therapy or speech-language pathology" and inserting "therapy, or speech-language pathology services".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1993.

SEC. 10146. EXTENSION OF MUNICIPAL HEALTH SERVICE DEMONSTRATION PROJECTS.

Section 9215 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 6135 of OBRA 1989, is amended—

(1) by striking "December 31, 1993" and inserting "December 31, 1997", and

(2) in the second sentence, by inserting after "beneficiary costs," the following: "costs to the medicaid program and other payors, access to care, outcomes, beneficiary satisfaction, utilization differences among the different populations served by the projects,".

SEC. 10147. TREATMENT OF CERTAIN INDIAN HEALTH PROGRAMS AND FACILITIES AS FEDERALLY-QUALIFIED HEALTH CENTERS.

(a) IN GENERAL.—Section 1861(aa)(4) (42 U.S.C. 1395x(aa)(4)) is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; or"; and

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

"(D) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of section 4161(a)(2)(C) of OBRA 1990.

SEC. 10148. EXTENSION OF INFLUENZA VACCINATION DEMONSTRATION.

(a) IN GENERAL.—Section 4071(b)(1) of OBRA 1987 is amended by striking the period at the end and inserting the following: ", except that the reference in clause (ii) of paragraph (2)(B) of such subsection to '24 months' shall be deemed to be a reference to '30 months'.".

(b) LIMITATION ON USE OF AMOUNTS.—The second sentence of section 4071(b)(2) of OBRA 1987 is amended by striking "and evaluate" and inserting "and (during fiscal years other than fiscal year 1993) evaluate".

SEC. 10149. MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) REVISION OF INFORMATION ON PART B CLAIMS FORMS.—Section 1833(q)(1) (42 U.S.C. 1395l(q)(1)) is amended—

(1) by striking "provider number" and inserting "unique physician identification number"; and

(2) by striking "and indicate whether or not the referring physician is an interested investor (within the meaning of section 1877(h)(5))".

(b) CONSULTATION FOR SOCIAL WORKERS.—Effective with respect to services furnished on or after January 1, 1991, section 6113(c) of OBRA 1989 is amended—

(1) by inserting "and clinical social worker services" after "psychologist services"; and

(2) by striking "psychologist" the second and third place it appears and inserting "psychologist or clinical social worker".

(c) REPORTS ON HOSPITAL OUTPATIENT PAYMENT.—(1) OBRA 1989 is amended by striking section 6137.

(2) Section 1135(d) (42 U.S.C. 1320b 5(d)) is amended—

(A) by striking paragraph (6); and

(B) in paragraph (7)—

(i) by striking "systems" each place it appears and inserting "system"; and

(ii) by striking "paragraphs (1) and (6)" and inserting "paragraph (1)".

(d) RADIOLOGY AND DIAGNOSTIC SERVICES PROVIDED IN HOSPITAL OUTPATIENT DEPARTMENTS.—(1) Effective as if included in the enactment of OBRA 1989, section 1833(n)(1)(B)(i)(II) (42 U.S.C. 1395l(n)(1)(B)(i)(II)) is amended—

(A) by striking "1989" and inserting "1989 and for services described in subsection (a)(2)(E)(ii) furnished on or after January 1, 1992"; and

(B) by striking "1842(b)" and inserting "1842(b) (or, in the case of services furnished on or after January 1, 1992, under section 1848)".

(2) Effective as if included in the enactment of OBRA 1989, section 1833(n)(1)(B)(i)(II) (42 U.S.C. 1395l(n)(1)(B)(i)(II)) is amended by striking "January 1, 1989" and inserting "April 1, 1989".

(e) PAYMENTS TO NURSE PRACTITIONERS IN RURAL AREAS (SECTION 4155 OF OBRA 1990).—(1) Section 1861(s)(2)(K)(iii) (42 U.S.C. 1395x(s)(2)(K)(iii)) is amended—

(A) by striking "subsection (aa)(3)" and inserting "subsection (aa)(5)"; and

(B) by striking "subsection (aa)(4)" and inserting "subsection (aa)(6)".

(2) Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—

(A) by striking "and" before "(N)"; and

(B) with respect to the matter inserted by section 4155(b)(2)(B) of OBRA 1990—

(i) by striking "(M)" and inserting ", and (O)", and

(ii) by transferring and inserting it (as amended) immediately before the semicolon at the end.

(3) Section 1833(r)(1) (42 U.S.C. 1395l(r)(1)) is amended—

(A) by striking "ambulatory" each place it appears and inserting "or ambulatory"; and

(B) by striking "center," and inserting "center".

(4) Section 1833(r)(2)(A) (42 U.S.C. 1395l(r)(2)(A)) is amended by striking "subsection (a)(1)(M)" and inserting "subsection (a)(1)(O)".

(5) Section 1861(b)(4) (42 U.S.C. 1395x(b)(4)) is amended by striking "subsection (s)(2)(K)(i)" and inserting "clauses (i) or (iii) of subsection (s)(2)(K)".

(6) Section 1861(aa)(5) (42 U.S.C. 1395x(aa)(5)) is amended by striking "this Act" and inserting "this title".

(7) Section 1862(a)(14) (42 U.S.C. 1395y(a)(14)) is amended by striking "1861(s)(2)(K)(i)" and inserting "1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)".

(8) Section 1866(a)(1)(H) (42 U.S.C. 1395cc(a)(1)(H)) is amended by striking "1861(s)(2)(K)(i)" and inserting "1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)".

(f) OTHER MISCELLANEOUS AND TECHNICAL AMENDMENTS.—

(1) IMMEDIATE ENROLLMENT IN PART B BY INDIVIDUALS COVERED BY AN EMPLOYMENT-BASED PLAN.—(A) Subparagraphs (A) and (B) of section 1837(i)(3) (42 U.S.C. 1395p(i)(3)) are each amended—

(i) by striking "beginning with the first day of the first month in which the individual is no longer enrolled" and inserting "including each month during any part of which the individual is enrolled"; and

(ii) by striking "and ending seven months later" and inserting "ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled".

(B) Paragraphs (1) and (2) of section 1838(e) (42 U.S.C. 1395q(e)) are amended to read as follows:

"(1) in any month of the special enrollment period in which the individual is at any time enrolled in a plan (specified in subparagraph (A) or (B), as applicable, of section 1837(i)(3)) or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

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

(C) The amendments made by subparagraphs (A) and (B) shall take effect on the first day of the first month that begins after the expiration of the 120-day period that begins on the date of the enactment of this Act.

(2) BLEND AMOUNTS FOR AMBULATORY SURGICAL CENTER PAYMENTS.—Subclauses (I) and (II) of section 1833(i)(3)(B)(ii) (42 U.S.C. 1395l(i)(3)(B)(ii)) are each amended—

(A) by striking "for reporting" and inserting "for portions of cost reporting"; and

(B) by striking "and on or before" and inserting "and ending on or before".

(3) CLINICAL DIAGNOSTIC LABORATORY TESTS (SECTION 4154 OF OBRA 1990).—Section 4154(e)(5) of OBRA 1990 is amended by striking "(1)(A)" and inserting "(1)(A),".

(4) SEPARATE PAYMENT UNDER PART B FOR CERTAIN SERVICES (SECTION 4157 OF OBRA 1990).—Section 4157(a) of OBRA 1990 is amended by striking "(a) SERVICES OF" and all that follows through "Section" and inserting "(a) TREATMENT OF SERVICES OF CERTAIN HEALTH PRACTITIONERS.—Section".

(5) CERTIFIED REGISTERED NURSE ANESTHETISTS (SECTION 4160 OF OBRA 1990).—Section 1833(l)(4)(B)(ii)(VII) (42 U.S.C. 1395l(l)(4)(B)(ii)(VII)) is amended by striking "1997" and inserting "1996".

(6) COMMUNITY HEALTH CENTERS AND RURAL HEALTH CLINICS (SECTION 4161 OF OBRA 1990).—(A) The fourth sentence of section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) is amended—

(i) by striking "certification" the first place it appears and inserting "approval"; and

(ii) by striking "the Secretary's approval or disapproval of the certification" and inserting "Secretary's approval or disapproval".

(B) Section 4161(a)(7)(B) of OBRA 1990 is amended by inserting "and to the Committee on Finance of the Senate" after "Representatives".

(7) SCREENING MAMMOGRAPHY (SECTION 4163 OF OBRA 1990).—Section 4163 of OBRA 1990 is amended—

(A) by adding at the end of subsection (d) the following new paragraph:

"(3) The amendment made by paragraph (2)(A)(iv) shall apply to screening pap smears performed on or after July 1, 1990."; and

(B) in subsection (e), by striking "The amendments" and inserting "Except as provided in subsection (d)(3), the amendments.".

(8) INJECTABLE DRUGS FOR TREATMENT OF OSTEOPOROSIS.—

(A) CLARIFICATION OF DRUGS COVERED.—The section 1861(jj) (42 U.S.C. 1395x(jj)) inserted by section 4156(a)(2) of OBRA 1990 is amended—

(i) in the matter preceding paragraph (1), by striking "a bone fracture related to"; and

(ii) in paragraph (1), by striking "patient" and inserting "individual has suffered a bone fracture related to post-menopausal osteoporosis and that the individual".

(B) LIMITING COVERAGE TO DRUGS PROVIDED BY HOME HEALTH AGENCIES.—(i) The section 1861(jj) (42 U.S.C. 1395x(jj)) inserted by section 4156(a)(2) of OBRA 1990 is amended by striking "if" and inserting "by a home health agency if".

(ii) Section 1861(m)(5) (42 U.S.C. 1395x(m)(5)) is amended by striking "but excluding" and inserting "and a covered osteoporosis drug (as defined in subsection (kk), but excluding other".

(iii) Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is amended—

(I) by adding "and" at the end of subparagraph (N), and

(II) by striking subparagraph (O) and redesignating subparagraph (P) as subparagraph (O).

(C) PAYMENT BASED ON REASONABLE COST.—Section 1833(a)(2) (42 U.S.C. 1395l(a)(2)) is amended—

(i) in subparagraph (A), by striking "health services" and inserting "health services (other than covered osteoporosis drug (as defined in section 1861(kk)))";

(ii) by striking "and" at the end of subparagraph (D);

(iii) by striking the semicolon at the end and inserting "; and"; and

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

"(F) with respect to covered osteoporosis drug (as defined in section 1861(kk)) furnished by a home health

agency, 80 percent of the reasonable cost of such service, as determined under section 1861(v);".

(D) APPLICATION OF PART B DEDUCTIBLE.—Section 1833(b)(2) (42 U.S.C. 1395l(b)(2)) is amended by striking "services" and inserting "services (other than covered osteoporosis drug (as defined in section 1861(kk)))".

(E) COVERED OSTEOPOROSIS DRUG (SECTION 4156 OF OBRA 1990).—Section 1861 (42 U.S.C. 1395x) is amended, in the subsection (jj) inserted by section 4156(a)(2) of OBRA 1990, by striking "(jj) The term" and inserting "(kk) The term".

(9) OTHER MISCELLANEOUS AND TECHNICAL CORRECTIONS (SECTION 4164 OF OBRA 1990).—

(A) OWNERSHIP DISCLOSURE REQUIREMENTS.—(i) Section 1124A(a)(2)(A) (42 U.S.C. 1320a 3a(a)(2)(A)) is amended by striking "of the Social Security Act".

(ii) Section 4164(b)(4) of OBRA 1990 is amended by striking "paragraph" and inserting "paragraphs".

(B) DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS.—Section 4164(c) of OBRA 1990 is amended by striking "publish" and inserting "publish, and shall periodically update,".

(g) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall take effect as if included in the enactment of OBRA 1990.

Subtitle C—Provisions Relating to Parts A and B

SEC. 10201. PROVISIONS RELATING TO PHYSICIAN OWNERSHIP AND REFERRAL.

(a) MULTIPLE LOCATIONS FOR GROUP PRACTICES.—Section 1877(b)(2)(A)(ii)(II) (42 U.S.C. 1395nn(b)(2)(A)(ii)(II)) is amended by striking "centralized provision" and inserting "provision of some or all".

(b) TREATMENT OF COMPENSATION ARRANGEMENTS.—

(1) RENTAL OF OFFICE SPACE AND EQUIPMENT.—Paragraph (1) of section 1877(e) (42 U.S.C. 1395nn(e)) is amended to read as follows:

"(1) RENTAL OF OFFICE SPACE; RENTAL OF EQUIPMENT.—

"(A) OFFICE SPACE.—Payments made by a lessee to a lessor for the use of premises if—

"(i) the lease is set out in writing, signed by the parties, and specifies the premises covered by the lease,

"(ii) the aggregate space rented or leased is reasonable and necessary for the legitimate business purposes of the lease or rental,

"(iii) the lease provides for a term of rental or lease for at least one year,

"(iv) in the case of a lease that is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis, the

lease specifies exactly the schedule of such intervals, their length, and the rent for such intervals,

"(v) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(vi) the lease would be commercially reasonable even if no referrals were made between the parties, and

"(vii) the compensation arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(B) EQUIPMENT.—Payments made by a lessee of equipment to the lessor of the equipment for the use of the equipment if—

"(i) the lease is set out in writing, signed by the parties, and specifies the equipment covered by the lease,

"(ii) the equipment rented or leased is reasonable and necessary for the legitimate business purposes of the lease or rental,

"(iii) the lease provides for a term of rental or lease of at least one year,

"(iv) in the case of a lease that is intended to provide the lessee with use of the equipment for periodic intervals of time, rather than on a full-time basis, the lease specifies exactly the schedule of such intervals, their length, and the rent for such intervals,

"(v) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(vi) the lease would be commercially reasonable even if no referrals were made between the parties, and

"(vii) the compensation arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.".

(2) BONA FIDE EMPLOYMENT RELATIONSHIPS.—Paragraph (2) of such section is amended—

(A) by striking "WITH HOSPITALS",

(B) by striking "An arrangement" and all that follows through "if" and inserting "Any amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment, or paid by a hospital pursuant to an arrangement with a physician (or immediate family member) for the provision of administrative services, if",

(C) in subparagraphs (A), (B), and (D), by striking "arrangement" and inserting "employment relationship or arrangement", and

(D) in subparagraph (C), by striking "to the hospital".

(3) ADDITIONAL EXCEPTIONS.—Such subsection is further amended by adding at the end the following new paragraphs:

"(7) PAYMENTS TO A PHYSICIAN FOR OTHER ITEMS OR SERVICES.—

"(A) IN GENERAL.—Payments made by an entity to a physician (or family member) who is not employed by the entity as compensation for services specified in subparagraph (B), if—

"(i) the compensation agreement is set out in writing, specifies the services to be provided by the parties, the compensation for each unit of service provided under the agreement, and the schedule for the provision of such services,

"(ii) the compensation paid over the term of the agreement is consistent with fair market value and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(iii) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity, and

"(iv) the compensation arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(B) SPECIFIED SERVICES.—For purposes of subparagraph (A), the services specified in this subparagraph are any of the following:

"(i) Consultative services that—

"(I) relate to test results that have been obtained that are outside established parameters, or are specifically requested by the referring physician on a specified patient,

"(II) are furnished by a physician other than the referring physician (or by another physician who is a member of the same group practice), and

"(III) for which the physician furnishes a written report for that patient.

"(ii) Interpretation of tissue pathology or Pap smear slides or the provision of other cytology services.

"(iii) Phlebotomy services for paternity or toxicology testing where the services are furnished by a physician other than the physician referring the individual for such testing (or by another physician who is a member of the same group practice).

"(iv) Employment-related health care services, including a payment by a self-insured employer for services rendered to employee applicants, employees, or their families under the terms of a health benefit plan.

"(v) Services as a clinical consultant to the entity as required for certification of the provider under section 353 of the Public Health Service Act.

"(vi) Services required by local, State, or Federal licensure, accreditation, or other health and safety provisions.

"(vii) Services billed in the name of a group practice provided by a physician under contract to the group practice for services not otherwise available directly through a physician who is a member of the group.

"(8) PAYMENTS BY A PHYSICIAN FOR ITEMS AND SERVICES.—Payments made by a physician—

"(A) to a laboratory in exchange for the provision of clinical laboratory services, or

"(B) to an entity as compensation for other items or services if the items or services are furnished at a price that is consistent with fair market value and are generally available to referrors and non-referrors alike on similar terms and conditions.

"(9) PAYMENTS FOR PATHOLOGY SERVICES OF A GROUP PRACTICE.—Payments made to a group practice for pathology services under an agreement if—

"(A) the agreement is set out in writing, specifies the services to be provided by the parties, and the compensation for services provided under the agreement;

"(B) the compensation paid over the term of the agreement is consistent with fair market value and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(C) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity; and

"(D) the compensation arrangement between the parties meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.".

(c) TREATMENT OF GROUP PRACTICE LABORATORIES.—

(1) USE OF BILLING NUMBERS, ETC..—Section 1877 is amended—

(A) in subsection (b)(2)(B), by inserting "under a billing number assigned to the group practice" after "member",

(B) in subsection (h)(4)(B), by inserting "and under a billing number assigned to the group" after "in the name of the group", and

(C) in subsection (h)(4)(C), by striking "by members of the group".

(2) TREATMENT OF SERVICES UNDER ARRANGEMENTS BETWEEN HOSPITALS AND GROUP PRACTICES.—

(A) IN GENERAL.—Section 1877(h)(4) is amended—

(i) in subparagraph (B) (as amended by paragraph (1)(B)), by inserting "(or are billed in the name of a hospital for which the group provides clinical laboratory services pursuant to an arrangement that meets the requirements of subparagraph (B))" after "assigned to the group";

(ii) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively;

(iii) by inserting "(A)" after ".—"; and

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

"(B) The requirements of this subparagraph, with respect to an arrangement for clinical laboratory services provided by the laboratory of a group and billed in the name of a hospital, are that—

"(i) with respect to services provided to an inpatient of the hospital, the arrangement is pursuant to the provision of inpatient hospital services under section 1861(b)(3);

"(ii) the arrangement began before December 19, 1989, and has continued in effect without interruption since such date;

"(iii) the laboratory provides substantially all of the clinical laboratory services to the hospital's patients;

"(iv) the arrangement is pursuant to an agreement that is set out in writing, specifies the services to be provided by the parties, and the compensation for services provided under the agreement;

"(v) the compensation paid over the term of the agreement is consistent with fair market value and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(vi) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity; and

"(vii) the arrangement between the parties meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.".

(B) CONFORMING AMENDMENT.—Section 1877(b)(2)(B) is amended by inserting "(or by a hospital for which such a group practice provides clinical laboratory services pursuant to an arrangement that meets the requirements of subsection (h)(4)(B))" after "by a group practice of which such physician is a member".

(3) TREATMENT OF CERTAIN FACULTY PRACTICE PLANS.—The last sentence of section 1877(h)(4)(A), as redesignated by paragraph (1)(A), is amended by inserting ", institution of higher education, or medical school" after "hospital".

(d) EXPANDING RURAL PROVIDER EXCEPTION TO COVER COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Section 1877(b) is further amended—

(A) by redesignating paragraph (5) as paragraph (7), and

(B) by inserting after paragraph (4) the following new paragraph:

"(5) RURAL PROVIDERS.—In the case of clinical laboratory services if—

"(A) the laboratory furnishing the services is in a rural area (as defined in section 1886(d)(2)(D)), and

"(B) substantially all of the services furnished by the laboratory to individuals entitled to benefits under this title are furnished to such individuals who reside in such a rural area.".

(2) CONFORMING AMENDMENTS.—Section 1877(d) is amended—

(A) by striking paragraph (2), and

(B) by redesignating paragraph (3) as paragraph (2).

(e) EXCEPTION FOR SHARED FACILITY SERVICES.—

(1) IN GENERAL.—Section 1877 is amended—

(A) in subsection (b), as amended by subsection (d)(1), by inserting after paragraph (5) the following new paragraph:

"(6) SHARED FACILITY SERVICES.—

"(A) IN GENERAL.—In the case of shared facility services of a shared facility—

"(i) that are furnished—

"(I) personally by the referring physician who is a shared facility physician or personally by an individual supervised by such a physician or by another shared facility physician and employed under the shared facility arrangement,

"(II) by a shared facility in a building in which the referring physician furnishes physician's services unrelated to the furnishing of shared facility services, and

"(III) to a patient of a shared facility physician; and

"(ii) that are billed by the referring physician or by an entity that is wholly owned by such physician.

"(B) LIMITATION.—The exception under this paragraph shall only apply to a shared facility only if the facility and the shared facility arrangement were established as of June 26, 1992."; and

(B) in subsection (h), by adding at the end the following new paragraph:

"(8) SHARED FACILITY RELATED DEFINITIONS.—

"(A) SHARED FACILITY SERVICES.—The term 'shared facility services' means, with respect to a shared facility, clinical laboratory services furnished by the facility to patients of shared facility physicians.

"(B) SHARED FACILITY.—The term 'shared facility' means an entity that furnishes shared facility services under a shared facility arrangement.

"(C) SHARED FACILITY PHYSICIAN.—The term 'shared facility physician' means, with respect to a shared facility, a physician who has a financial relationship under a shared facility arrangement with the facility.

"(D) SHARED FACILITY ARRANGEMENT.—The term 'shared facility arrangement' means, with respect to the provision of shared facility services in a building, a financial arrangement—

"(i) which is only between physicians who are providing services (unrelated to shared facility services) in the same building,

"(ii) in which the overhead expenses of the facility are shared, in accordance with methods previously determined by the physicians in the arrangement, among the physicians in the arrangement, and

"(iii) which, in the case of a corporation, is wholly owned and controlled by shared facility physicians.".

(2) GAO STUDY OF SHARED FACILITY ARRANGEMENTS.—

(A) IN GENERAL.—The Comptroller General shall analyze the effect on the utilization of health services of shared facility arrangements for which an exception is provided under the amendments made by paragraph (1). The analysis shall include a review of the effect of the limitation, described in section 1877(b)(6)(B) of the Social Security Act (as added by paragraph (1)), with respect to such exception and on the availability of services (including hematology services).

(B) REPORT.—Not later than January 1, 1994, the Comptroller General shall submit a report to Congress on the analysis conducted under subparagraph (A). The report shall include recommendations with respect to changing the limitation.

(f) EXEMPTION OF COMPENSATION ARRANGEMENTS INVOLVING CERTAIN TYPES OF REMUNERATION.—Section 1877(h)(1) (42 U.S.C. 1395nn(h)(1)) is amended—

(1) by striking subparagraph (B);

(2) in subparagraph (A), by inserting before the period the following: "(other than an arrangement involving only remuneration described in subparagraph (B))"; and

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

"(B) Remuneration described in this subparagraph is any remuneration consisting of any of the following:

"(i) The forgiveness of amounts owed for inaccurate tests, mistakenly performed tests, or the correction of minor billing errors.

"(ii) The provision of items, devices, or supplies of minor value that are used to—

"(I) collect, transport, process, or store specimens for the entity providing the item, device, or supply, or

"(II) communicate the results of tests for such entity.

"(iii) The furnishing by an entity of laboratory services to a group practice affiliated with the entity, if the entity provides all or substantially all of the clinical laboratory services of the group practice.".

(g) MISCELLANEOUS AND TECHNICAL CORRECTIONS.—Section 1877 (42 U.S.C. 1395nn) is amended—

(1) in the fourth sentence of subsection (f)—

(A) by striking "provided" and inserting "furnished", and

(B) by striking "provides" and inserting "furnish";

(2) in the fifth sentence of subsection (f)—

(A) by striking "providing" each place it appears and inserting "furnishing",

(B) by striking "with respect to the providers" and inserting "with respect to the entities", and

(C) by striking "diagnostic imaging services of any type" and inserting "magnetic resonance imaging, computerized axial tomography scans, and ultrasound services"; and

(3) in subsection (a)(2)(B), by striking "subsection (h)(1)(A)" and inserting "subsection (h)(1)".

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to referrals made on or after January 1, 1992.

SEC. 10202. DIRECT GRADUATE MEDICAL EDUCATION.

(a) ADJUSTMENT IN GME BASE-YEAR COSTS OF FEDERAL INSURANCE CONTRIBUTIONS ACT.—

(1) IN GENERAL.—In determining the amount of payment to be made under section 1886(h) of the Social Security Act in the case of a hospital described in subsection (b) for cost reporting periods beginning on or after October 1, 1992, the Secretary of Health and Human Services shall redetermine the approved FTE resident amount to reflect the amount that would have been paid the hospital if, during the hospital's base cost reporting period, the hospital had been liable for FICA taxes or for contributions to the retirement system of a State, a political subdivision of a State, or an instrumentality of such a State or political subdivision with respect to interns and residents in its medical residency training program.

(2) HOSPITALS AFFECTED.—A hospital described in this subsection is a hospital that did not pay FICA taxes with respect to interns and residents in its medical residency training program during the hospital's base cost reporting period, but is required to pay FICA taxes or make contributions to a retirement system described in paragraph (1) with respect to such interns and residents because of the amendments made by section 11332(b) of OBRA 1990.

(3) DEFINITIONS.—In this subsection:

(A) the "base cost reporting period" for a hospital is the hospital's cost reporting period that began during fiscal year 1984.

(B) The term "FICA taxes" means, with respect to a hospital, the taxes under section 3111 of the Internal Revenue Code of 1986.

(b) PUBLICLY-FUNDED FAMILY PRACTICE RESIDENCY PROGRAMS.—

(1) IN GENERAL.—Section 1886(h)(5) (42 U.S.C. 1395ww(h)(5)) is amended by adding at the end the following new subparagraph:

"(H) ADJUSTMENTS FOR CERTAIN FAMILY PRACTICE RESIDENCY PROGRAMS.—

"(i) IN GENERAL.—In the case of an approved medical residency training program (meeting the requirements of clause (ii)) of a hospital which received payments from the United States, a State, or a political

subdivision of a State or an instrumentality of such a State or political subdivision (other than payments under this title or a State plan under title XIX) for the program during the cost reporting period that began during fiscal year 1984, the Secretary shall—

"(I) provide for an average amount under paragraph (2)(A) that takes into account the Secretary's estimate of the amount that would have been recognized as reasonable under this title if the hospital had not received such payments, and

"(II) reduce the payment amount otherwise provided under this subsection in an amount equal to the proportion of such program payments during the cost reporting period involved that is allocable to this title.

"(ii) ADDITIONAL REQUIREMENTS.—A hospital's approved medical residency program meets the requirements of this clause if—

"(I) the program is limited to training for family and community medicine;

"(II) the program is the only approved medical residency program of the hospital; and

"(III) the average amount determined under paragraph (2)(A) for the hospital (as determined without regard to the increase in such amount described in clause (i)(I)) does not exceed $10,000.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to payments under section 1886(h) of the Social Security Act for cost reporting periods beginning on or after October 1, 1990.

(c) PREVENTIVE CARE SERVICES AS PART OF INITIAL RESIDENCY PERIOD.—

(1) ELIGIBILITY OF PREVENTIVE CARE RESIDENCY PROGRAMS FOR EXPANDED INITIAL RESIDENCY PERIODS.—Section 1886(h)(5)(F)(ii) (42 U.S.C. 1395ww(h)(5)(F)(ii)) is amended by inserting after "fellowship program" the following: "or a preventive care residency or fellowship program".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1992.

SEC. 10203. END STAGE RENAL DISEASE.

(a) COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.—

(1) IN GENERAL.—Section 1861(s)(2)(J) (42 U.S.C. 1395x(s)(2)(J)) is amended by striking "title, within" and all that follows and inserting the following: "title, but only in the case of drugs furnished—

"(i) before 1993, within 12 months after the date of the transplant procedure,

"(ii) during 1993, within 18 months after the date of the transplant procedure,

"(iii) during 1994, within 24 months after the date of the transplant procedure,

"(iv) during 1995, within 30 months after the date of the transplant procedure, and

"(v) during any year after 1995, within 36 months after the date of the transplant procedure;".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this section.

(b) PAYMENT FOR ERYTHROPOIETIN.—

(1) IN GENERAL.—Section 1881(b)(11)(B)(ii)(I) (42 U.S.C. 1395rr(b)(11)(B)(ii)(I)) is amended—

(A) by striking "1991" and inserting "1993"; and

(B) by striking "$11" and inserting "$10".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to erythropoietin furnished on or after January 1, 1993.

(c) HOME DIALYSIS DEMONSTRATION TECHNICAL CORRECTION.—

(1) IN GENERAL.—Section 4202 of OBRA 1990 is amended—

(A) in subsection (b)(1)(A), by striking "home hemodialysis staff assistant" and inserting "qualified home hemodialysis staff assistant (as described in subsection (d))";

(B) in subsection (b)(2)(B)(ii)(I), by striking "(as adjusted to reflect differences in area wage levels);

(C) in subsection (c)(1)(A), by striking "skilled"; and

(D) in subsection (c)(1)(E), by striking "(b)(4)" and inserting "(b)(2)".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of OBRA 1990.

SEC. 10204. MEDICARE SECONDARY PAYER.

(a) SECONDARY PAYER EXEMPTION FOR MEMBERS OF RELIGIOUS ORDERS.—

Effective as if included in the enactment of OBRA 1989, section 6202(e)(2) of such Act is amended by adding at the end the following: "Such amendment also shall apply to items and services furnished before such date with respect to secondary payor cases which the Secretary of Health and Human Services had not identified as of such date.".

(b) IMPROVING IDENTIFICATION OF MEDICARE SECONDARY PAYER SITUATIONS.—

(1) SURVEY OF BENEFICIARIES.—

(A) IN GENERAL.—Section 1862(b)(5) (42 U.S.C. 1395y(b)(5)) is amended by adding at the end the following new subparagraph:

"(D) OBTAINING INFORMATION FROM BENEFICIARIES.—Before an individual applies for benefits under part A or enrolls under part B, the Administrator shall mail the individual a questionnaire to obtain information on whether the individual is covered under a primary plan and the nature of the coverage provided under the plan, including the name, address, and identifying number of the plan.".

(B) DISTRIBUTION OF QUESTIONNAIRE BY CONTRACTOR.—The Secretary of Health and Human Services shall enter into an agreement with an entity to distribute the questionnaire described in section 1862(b)(5)(D) of the Social Securi-

ty Act (as added by subparagraph (A)) not later than January 1, 1993.

(C) NO MEDICARE SECONDARY PAYOR DENIAL BASED ON FAILURE TO COMPLETE QUESTIONNAIRE.—Section 1862(b)(2) (42 U.S.C. 1395y(b)(2)) is amended by adding at the end the following new subparagraph:

"(C) TREATMENT OF QUESTIONNAIRES.—The Secretary may not fail to make payment under subparagraph (A) solely on the ground that an individual failed to complete a questionnaire concerning the existence of a primary plan.".

(2) MANDATORY SCREENING BY PROVIDERS AND SUPPLIERS UNDER PART B.—

(A) IN GENERAL.—Section 1862(b) (42 U.S.C. 1395y(b)) is amended by adding at the end the following new paragraph:

"(6) SCREENING REQUIREMENTS FOR PROVIDERS AND SUPPLIERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this title, no payment may be made for any item or service furnished under part B unless the entity furnishing such item or service completes (to the best of its knowledge and on the basis of information obtained from the individual to whom the item or service is furnished) the portion of the claim form relating to the availability of other health benefit plans.

"(B) PENALTIES.—An entity that knowingly, willfully, and repeatedly fails to complete a claim form in accordance with subparagraph (A) or provides inaccurate information relating to the availability of other health benefit plans on a claim form under such subparagraph shall be subject to a civil money penalty of not to exceed $2,000 for each such incident. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(B) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to items and services furnished on or after January 1, 1993.

(c) IMPROVEMENTS IN RECOVERY OF PAYMENTS FROM PRIMARY PAYERS.—

(1) SUBMISSION OF REPORTS ON EFFORTS TO RECOVER ERRONEOUS PAYMENTS.—

(A) FISCAL INTERMEDIARIES UNDER PART A.—Section 1816 (42 U.S.C. 1396h) is amended by adding at the end the following new subsection:

"(k) An agreement with an agency or organization under this section shall require that such agency or organization submit an annual report to the Secretary describing the steps taken to recover payments made for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(B) CARRIERS UNDER PART B.—Section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended—

(i) by striking "and" at the end of subparagraphs (G) and (H); and

(ii) by inserting after subparagraph (H) the following new subparagraph:

"(I) will submit annual reports to the Secretary describing the steps taken to recover payments made under this part for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(2) REQUIREMENTS UNDER CARRIER PERFORMANCE EVALUATION PROGRAM.—

(A) FISCAL INTERMEDIARIES UNDER PART A.—Section 1816(f)(1)(A) (42 U.S.C. 1396h(f)(1)(A)) is amended by striking "processing" and inserting "processing (including the agency's or organization's success in recovering payments made under this title for services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)))".

(B) CARRIERS UNDER PART B.—Section 1842(b)(2) (42 U.S.C. 1395u(b)(2)) is amended by adding at the end the following new subparagraph:

"(D) In addition to any other standards and criteria established by the Secretary for evaluating carrier performance under this paragraph relating to avoiding erroneous payments, the Secretary shall establish standards and criteria relating to the carrier's success in recovering payments made under this part for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(3) DEADLINE FOR REIMBURSEMENT BY PRIMARY PLANS.—

(A) IN GENERAL.—Section 1862(b)(2)(B)(i) (42 U.S.C. 1395y(b)(2)(B)(i)) is amended by adding at the end the following sentence: "If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date such notice or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).".

(B) CONFORMING AMENDMENT.—The heading of clause (i) of section 1862(b)(2)(B) is amended to read as follows: "REPAYMENT REQUIRED.—".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to payments for items and services furnished on or after January 1, 1993.

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to contracts with fiscal intermediaries and carriers under title XVIII of the Social Security Act for years beginning with 1993.

(d) MISCELLANEOUS AND TECHNICAL CORRECTIONS.—

(1) The sentence in section 1862(b)(1)(C) added by section 4203(c)(1)(B) of OBRA 1990 is amended—

(A) by striking "on or before January 1, 1996," and inserting "before January 1, 1996"; and

(B) by striking "clauses (i) and (ii)" and inserting "this subparagraph".

(2) Effective as if included in the enactment of OBRA 1989, section 1862(b)(1) is amended—

(A) in subparagraphs (A)(v) and (B)(iv)(II), by inserting ", without regard to section 5000(d) of such Code" before the period at the end of each subparagraph;

(B) in subparagraph (A)(iii), by striking "current calendar year or the preceding calendar year" and inserting "current calendar year and the preceding calendar year"; and

(C) in the matter in subparagraph (C) after clause (ii), by striking "taking into account that" and inserting "paying benefits secondary to this title when".

(3) Section 4203(c)(2) of OBRA 1990 is amended—

(A) by striking "the application of clause (iii)" and inserting "the second sentence";

(B) by striking "on individuals" and all that follows through "section 226A of such Act";

(C) in clause (ii), by striking "clause" and inserting "sentence";

(D) in clause (v), by adding "and" at the end; and

(E) in clause (vi)—

(i) by inserting "of such Act" after "1862(b)(1)(C)", and

(ii) by striking the period at the end and inserting the following: ", without regard to the number of employees covered by such plans.".

(4) Section 4203(d) of OBRA 1990 is amended by striking "this subsection" and inserting "this section".

(5) Except as provided in paragraph (2), the amendments made by this subsection shall be effective as if included in the enactment of OBRA 1990.

SEC. 10205. IMPROVED OUTREACH FOR QUALIFIED MEDICARE BENEFICIARIES.

The Secretary of Health and Human Services shall establish and implement a method for obtaining information from newly eligible medicare beneficiaries that may be used to determine whether such beneficiaries may be eligible for medical assistance for medicare cost-sharing under State medicaid plans as qualified medicare beneficiaries, and for transmitting such information to the State in which such a beneficiary resides.

SEC. 10206. SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.

(a) EXTENSION OF CURRENT WAIVERS.—Section 4018(b) of OBRA 1987, as amended by OBRA 1990, is amended—

(1) in paragraph (1) by striking "December 31, 1995" and inserting "December 31, 1997"; and

(2) in paragraph (4) by striking "March 31, 1996" and inserting "March 31, 1998".

(b) EXPANSION OF DEMONSTRATIONS.—Section 2355 of the Deficit Reduction Act of 1984 is amended—

(1) in the last sentence of subsection (a) by striking "12 months" and inserting "36 months"; and

(2) in subsection (b)(1)(B)—

(A) by striking "or" at the end of clause (iii); and

(B) by redesignating clause (iv) as clause (v) and inserting after clause (iii) the following new clause:

"(iv) integrating acute and chronic care management for patients with end-stage renal disease through expanded community care case management services (and for purposes of a demonstration project conducted under this clause, any requirement under a waiver granted under this section that a project disenroll individuals who develop end-stage renal disease shall not apply); or".

(c) EXPANSION OF NUMBER OF MEMBERS PER SITE.—The Secretary of Health and Human Services may not impose a limit of less than 12,000 on the number of individuals that may participate in a project conducted under section 2355 of the Deficit Reduction Act of 1984.

(d) MISCELLANEOUS AND TECHNICAL CORRECTIONS.—

(1) The section following section 4206 of OBRA 1990 is amended by striking "SEC. 4027." and inserting "SEC. 4207.", and in this subtitle is referred to as section 4207 of OBRA 1990.

(2) Section 2355(b)(1)(B) of the Deficit Reduction Act of 1984, as amended by section 4207(b)(4)(B)(ii) of OBRA 1990, is amended—

(A) by striking "12907(c)(4)(A)" and inserting "4207(b)(4)(B)(i)", and

(B) by striking "feasibilitly" and inserting "feasibility".

(3) Section 4207(b)(4)(B)(iii)(III) of OBRA 1990 is amended by striking the period at the end and inserting a semicolon.

(4) Subsections (c)(3) and (e) of section 2355 of the Deficit Reduction Act of 1984, as amended by section 4207(b)(4)(B) of OBRA 1990, are each amended by striking "12907(c)(4)(A)" each place it appears and inserting "4207(b)(4)(B)".

(5) Section 4207(c)(2) of OBRA 1990 is amended by striking "the Committee on Ways and Means" each place it appears and inserting "the Committees on Ways and Means and Energy and Commerce".

(6) Section 4207(d) of OBRA 1990 is amended by redesignating the second paragraph (3) (relating to effective date) as paragraph (4).

(7) Section 4207(i)(2) of OBRA 1990 is amended—

(A) by striking the period at the end of clause (iii) and inserting a semicolon, and

(B) in clause (v), by striking "residents" and inserting "patients".

(8) Section 4207(j) of OBRA 1990 is amended by striking "title" each place it appears and inserting "subtitle".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of OBRA 90.

SEC. 10207. PEER REVIEW ORGANIZATIONS.

(a) REPEAL OF PRO PRECERTIFICATION REQUIREMENT FOR CERTAIN SURGICAL PROCEDURES.—

(1) IN GENERAL.—Section 1164 (42 U.S.C. 1320c 13) is repealed.

(2) CONFORMING AMENDMENTS.—

(A) Section 1154 (42 U.S.C. 1320c 3) is amended—

(i) in subsection (a), by striking paragraph (12), and

(ii) in subsection (d), by striking "(and except as provided in section 1164)".

(B) Section 1833 (42 U.S.C. 1395l) is amended—

(i) in subsection (a)(1)(D)(i), by striking ", or for tests furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion)";

(ii) in subsection (a)(1), by striking clause (G);

(iii) in subsection (a)(2)(A), by striking "to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion),";

(iv) in subsection (a)(2)(D)(i)—

(I) by striking "basis," and inserting "basis or", and

(II) by striking ", or for tests furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion))";

(v) in subsection (a)(3), by striking "and for items and services furnished in connection with obtaining a second opinion required under section 1164(c)(2), or a third opinion, if the second opinion was in disagreement with the first opinion)"; and

(vi) in the first sentence of subsection (b)—

(I) by striking "(3)" and inserting "and (3)", and

(II) by striking ", and (4)" and all that follows up to the period at the end.

(C) Section 1834(g)(1)(B) (42 U.S.C. 1395m(g)(1)(B)) is amended by striking "and for items and services furnished in connection with obtaining a second opinion required under section 1164(c)(2), or a third opinion, if the second opinion was in disagreement with the first opinion)".

(D) Section 1862(a) (42 U.S.C. 1395y(a)) is amended—

(i) by adding "or" at the end of paragraph (14),

(ii) by striking "; or" at the end of paragraph (15) and inserting a period, and

(iii) by striking paragraph (16).

(E) The third sentence of section 1866(a)(2)(A) (42 U.S.C. 1395w(a)(2)(A)) is amended by striking ", with respect to items and services furnished in connection with obtaining a

second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion),".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services provided on or after January 1, 1993.

(b) MISCELLANEOUS AND TECHNICAL CORRECTIONS.—(1) The third sentence of section 1156(b)(1) (42 U.S.C. 1320c 5(b)(1)) is amended by striking "whehter" and inserting "whether".

(2) Section 1154(a)(9)(B) (42 U.S.C. 1320c 3(a)(9)(B)) is amended by striking "this subsection" and inserting "section 1156(a)".

(3) Section 4205(d)(2)(B) of OBRA 1990 is amended by striking "amendments" and inserting "amendment".

(4) Section 1160(d) (42 U.S.C. 1320c 9(d)) is amended by striking "subpena" and inserting "subpoena".

(5) Section 4205(e)(2) of OBRA 1990 is amended by striking "amendments" and inserting "amendment" and by striking "all".

(6)(A) Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if included in the enactment of OBRA 1990.

(B) The amendment made by paragraph (2) (relating to the requirement on reporting of information to State licensing boards) shall take effect on the date of the enactment of this Act.

SEC. 10208. HOSPICE INFORMATION TO HOME HEALTH BENEFICIARIES.

(a) IN GENERAL.—Section 1891(a)(1) (42 U.S.C. 1395bbb(a)(1)) is amended by adding at the end the following new subparagraph:

"(H) The right, in the case of a resident who is entitled to benefits under this title, to be fully informed orally and in writing (at the time of coming under the care of the agency) of the entitlement of individuals to hospice care under section 1812(a)(4) (unless there is no hospice program providing hospice care for which payment may be made under this title within the geographic area of the facility and it is not the common practice of the agency to refer patients to hospice programs located outside such geographic area).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after the first day of the first month beginning more than one year after the date of the enactment of this Act.

SEC. 10209. INTEREST PAYMENTS.

(a) IN GENERAL.—Sections 1816(c)(2)(B)(ii)(IV) and 1842(c)(2)(B)(ii)(IV) of the Social Security Act shall be applied with respect to claims received in the 12-month period beginning October 1, 1992, by substituting "30 calendar days" for "24 calendar days" and "17 calendar days".

(b) EFFECTIVE DATE.—Subsection (a) shall take effect on the date of the enactment of the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 1993.

SEC. 10210. CLARIFICATION OF JUDICIAL REVIEW RIGHTS.

(a) IN GENERAL.—Section 1869(b) (42 U.S.C. 1395ff(b)) is amended by adding at the end the following new paragraph:

"(6) Nothing in this subsection (including paragraph (5)) shall be construed as requiring a person to file a claim with, or obtain findings or a decision of, the Secretary prior to seeking judicial review of an issue under this subsection, if the issue involves no material issues of fact in dispute and involves a challenge to the validity of a regulation or instruction which relates to a method for determining the amount of payment under part B.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as if included in the enactment of section 9313 of OBRA 1986.

SEC. 10211. ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.

(a) ADJUSTMENTS.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (D) the following new subparagraph:

"(E) MEDICARE ADMINISTRATIVE COSTS.—To the extent that appropriations are enacted that provide additional new budget authority (as compared with a base level of $1,526,000,000 for new budget authority) for the administration of the Medicare program by fiscal intermediaries and carriers pursuant to sections 1816 and 1842(a) of title XVIII of the Social Security Act, the adjustment for that year shall be that amount, but shall not exceed—

"(i) for fiscal year 1993, $177,000,000 in new budget authority and $177,000,000 in outlays;

"(ii) for fiscal year 1994, $198,000,000 in new budget authority and $198,000,000 in outlays; and

"(iii) for fiscal year 1995, $220,000,000 in new budget authority and $220,000,000 in outlays; and

the prior-year outlays resulting from these appropriations of budget authority and additional adjustments equal to the sum of the maximum adjustments that could have been made in preceding fiscal years under this subparagraph.".

(b) CONFORMING AMENDMENTS.—

(1) Section 603(a) of the Congressional Budget Act of 1974 is amended by striking "section 251(b)(2)(E)(i)" and inserting "section 251(b)(2)(F)(i)".

(2) Section 606(d) of the Congressional Budget Act of 1974 is amended—

(A) in paragraph (1)(A) by striking "section 251(b)(2)(E)(i)" and inserting "section 251(b)(2)(F)(i)"; and

(B) in paragraph (2), by inserting "251(b)(2)(E)," after "251(b)(2)(D),".

SEC. 10212. HEALTH MAINTENANCE ORGANIZATIONS.

(a) ADJUSTMENT IN MEDICARE CAPITATION PAYMENTS TO ACCOUNT FOR REGIONAL VARIATIONS IN APPLICATION OF SECONDARY PAYOR PROVISIONS.—

(1) IN GENERAL.—Section 1876(a)(4) (42 U.S.C. 1395mm(a)(4)) is amended by adding at the end the following new sentence:

"In establishing the adjusted average per capita cost for a geographic area, the Secretary shall take into account the differences between the proportion of individuals in the area with respect to whom there is a group health plan that is a primary payor (within the meaning of section 1862(b)(2)(A)) compared to the proportion of all such individuals with respect to whom there is such a group health plan.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts entered into for years beginning with 1994.

(b) REVISIONS IN THE PAYMENT METHODOLOGY FOR RISK CONTRACTORS .—Section 4204(b) of OBRA 1990 is amended to read as follows:

"(b) REVISIONS IN THE PAYMENT METHODOLOGY FOR RISK CONTRACTORS.—(1)(A) Not later than January 1, 1993, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall submit a proposal to the Congress that provides for revisions to the payment method to be applied in years beginning with 1994 for organizations with a risk-sharing contract under section 1876(g) of the Social Security Act.

"(B) In proposing the revisions required under subparagraph (A) the Secretary shall consider—

"(i) the difference in costs associated with medicare beneficiaries with differing health status and demographic characteristics; and

"(ii) the effects of using alternative geographic classifications on the determinations of costs associated with beneficiaries residing in different areas.

"(2) Not later than May 1, 1993, the Comptroller General shall review the proposal made pursuant to paragraph (1), and shall report to Congress on the appropriateness of the proposed modifications.".

(c) MISCELLANEOUS AND TECHNICAL CORRECTIONS.—(1) Section 1876(a)(3) (42 U.S.C. 1395mm(a)(3)) is amended by striking "subsection (c)(7)" and inserting "subsections (c)(2)(B)(ii) and (c)(7)".

(2) Section 4204(c)(3) of OBRA 1990 is amended by striking "for 1991" and inserting "for years beginning with 1991".

(3) Section 4204(d)(2) of OBRA 1990 is amended by striking "amendment" and inserting "amendments".

(4) Section 1876(a)(1)(E)(ii)(I) (42 U.S.C. 1395mm(a)(1)(E)(ii)(I)) is amended by striking the comma after "contributed to".

(5) Section 4204(e)(2) of OBRA 1990 is amended by striking "(which has a risk-sharing contract under section 1876 of the Social Security Act)".

(6) Section 4204(f)(4) of OBRA 1990 is amended by striking "final".

(7) Section 1862(b)(3)(C) (42 U.S.C. 1395y(b)(3)(C)) is amended—

(A) in the heading, by striking "PLAN" and inserting "PLAN OR A LARGE GROUP HEALTH PLAN";

(B) by striking "group health plan" and inserting "group health plan or a large group health plan";

(C) by striking ", unless such incentive is also offered to all individuals who are eligible for coverage under the plan"; and

(D) by striking "the first sentence of subsection (a) and other than subsection (b)" and inserting "subsections (a) and (b)".

(8) The amendments made by this subsection shall take effect as if included in the enactment of OBRA 1990.

SEC. 10213. TREATMENT OF CERTAIN STATE HEALTH CARE PROGRAMS.

Section 514(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(5)) is amended to read as follows:

"(5)(A) Except as provided in subparagraphs (B) and (C), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. § § 393 1 through 393 51).

"(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a) any State tax law relating to employee benefits plans.

"(C) If the Secretary of Labor notifies the Governor of the State of Hawaii that as the result of an amendment to the Hawaii Prepaid Health Care Act enacted after October 5, 1992—

"(i) the proportion of the population with health care coverage under such Act is less than such proportion on such date, or

"(ii) the level of benefit coverage provided under such Act is less than the actuarial equivalent of such level of coverage on such date,

subparagraph (A) shall not apply with respect to the application of such amendment to such Act after the date of such notification.".

SEC. 10214. MISCELLANEOUS AND TECHNICAL CORRECTIONS.

(a) SURVEY AND CERTIFICATION REQUIREMENTS.—(1) Section 1864 (42 U.S.C. 1395aa) is amended—

(A) in subsection (e), by striking "title" and inserting "title (other than any fee relating to section 353 of the Public Health Service Act)"; and

(B) in the first sentence of subsection (a), by striking "1861(s) or" and all that follows through "Service Act," and inserting "1861(s),".

(2) An agreement made by the Secretary of Health and Human Services with a State under section 1864(a) of the Social Security Act may include an agreement that the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by the Secretary for the purpose of determining whether a laboratory meets the requirements of section 353 of the Public Health Service Act.

(b) OTHER MISCELLANEOUS AND TECHNICAL PROVISIONS.—(1) Section 1833 (42 U.S.C. 1395l) is amended by redesignating the subsection (r) added by section 4206(b)(2) of OBRA 1990 as subsection (s).

(2) Section 1866(f)(1) (42 U.S.C. 1395cc(f)(1)) is amended by striking "1833(r)" and inserting "1833(s)".

(3) Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is amended by moving subparagraph (O), as redesignated by section 10149(f)(8)(B)(iii)(II) of this title, two ems to the left.

(4) Section 1881(b)(1)(C) (42 U.S.C. 1395rr(b)(1)(C)) is amended by striking "1861(s)(2)(Q)" and inserting "1861(s)(2)(P)".

(5) Section 4201(d)(2) of OBRA 1990 is amended by striking "(B) by striking", "(C) by striking", and "(3) by adding" and inserting "(i) by striking", "(ii) by striking", and "(B) by adding", respectively.

(6)(A) Section 4207(a)(1) of OBRA 1990 is amended by adding closing quotation marks and a period after "such review.".

(B) Section 4207(a)(4) of OBRA 1990 is amended by striking "this subsection" and inserting "paragraphs (2) and (3)".

(C) Section 4207(b)(1) of OBRA 1990 is amended by striking "section 3(7)" and inserting "section 601(a)(1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of OBRA 1990.

Subtitle D—Provisions Relating to Medicare Supplemental Insurance Policies

SEC. 10301. STANDARDS FOR MEDICARE SUPPLEMENTAL INSURANCE POLICIES.

(a) SIMPLIFICATION OF MEDICARE SUPPLEMENTAL POLICIES.—

(1) Section 4351 of OBRA 1990 is amended by striking "(a) IN GENERAL.—".

(2) Section 1882(p) (42 U.S.C. 1395ss(p)) is amended—

(A) in paragraph (1)(A)—

(i) by striking "promulgates" and inserting "changes the revised NAIC Model Regulation (described in subsection (m)) to incorporate",

(ii) by striking "(such limitations, language, definitions, format, and standards referred to collectively in this subsection as 'NAIC standards')", and

(iii) by striking "included a reference to the NAIC standards" and inserting "were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the '1991 NAIC Model Regulation')";

(B) in paragraph (1)(B)—

(i) by striking "promulgate NAIC standards" and inserting "make the changes in the revised NAIC Model Regulation",

(ii) by striking "limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as 'Federal standards')" and inserting "a regulation", and

(iii) by striking "included a reference to the Federal standards" and inserting "were a reference to the revised NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the '1991 Federal Regulation')";

(C) in paragraph (1)(C)(i), by striking "NAIC standards or the Federal standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation";

(D) in paragraphs (1)(C)(ii)(I), (1)(E), (2), and (9)(B), by striking "NAIC or Federal standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation";

(E) in paragraph (2)(C), by striking "(5)(B)" and inserting "(4)(B)";

(F) in paragraph (4)(A)(i), by inserting "or paragraph (6)" after "(B)";

(G) in paragraph (4), by striking "applicable standards" each place it appears and inserting "applicable 1991 NAIC Model Regulation or 1991 Federal Regulation";

(H) in paragraph (6), by striking "in regard to the limitation of benefits described in paragraph (4)" and inserting "described in clauses (i) through (iii) of paragraph (1)(A)";

(I) in paragraph (7), by striking "policyholder" and inserting "policyholders";

(J) in paragraph (8), by striking "after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection" and inserting "on and after the effective date specified in paragraph (1)(C) (but subject to paragraph (10)), in violation of the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation insofar as such regulation relates to the requirements of subsection (o) or (q) or clause (i), (ii), or (iii) of paragraph (1)(A)";

(K) in paragraph (9), by adding at the end the following new subparagraph:

"(D) Subject to paragraph (10), this paragraph shall apply to sales of policies occurring on or after the effective date specified in paragraph (1)(C)."; and

(L) in paragraph (10), by striking "this subsection" and inserting "paragraph (1)(A)(i)".

(b) GUARANTEED RENEWABILITY.—Section 1882(q) (42 U.S.C. 1395ss(q)) is amended—

(1) in paragraph (2), by striking "paragraph (2)" and inserting "paragraph (4)", and

(2) in paragraph (4), by striking "the succeeding issuer" and inserting "issuer of the replacement policy".

(c) ENFORCEMENT OF STANDARDS.—

(1) Section 1882(a)(2) (42 U.S.C. 1395ss(a)(2)) is amended—

(A) in subparagraph (A), by striking "NAIC standards or the Federal standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation", and

(B) by striking "after the effective date of the NAIC or Federal standards with respect to the policy" and inserting "on and after the effective date specified in subsection (p)(1)(C)".

(2) The sentence in section 1882(b)(1) added by section 4353(c)(5) of OBRA 1990 is amended—

(A) by striking "The report" and inserting "Each report",

(B) by inserting "and requirements" after "standards",

(C) by striking "and" after "compliance,", and

(D) by striking the comma after "Commissioners".

(3) Section 1882(g)(2)(B) (42 U.S.C. 1395ss(g)(2)(B)) is amended by striking "Panel" and inserting "Secretary".

(4) Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is amended by striking "the the Secretary" and inserting "the Secretary".

(d) PREVENTING DUPLICATION.—

(1) Section 1882(d)(3)(A) (42 U.S.C. 1395ss(d)(3)(A)) is amended—

(A) by amending the first sentence to read as follows: "(i) It is unlawful for a person to sell or issue to an individual entitled to benefits under part A or enrolled under part B of this title—

"(I) a health insurance policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under this title or title XIX,

"(II) a medicare supplemental policy with knowledge that the individual is entitled to benefits under another medicare supplemental policy, or

"(III) a health insurance policy (other than a medicare supplemental policy) with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled, other than benefits to which the individual is entitled under a requirement of State or Federal law.";

(B) by designating the second sentence as clause (ii) and, in such clause, by striking "the previous sentence" and inserting "clause (i)";

(C) by designating the third sentence as clause (iii) and, in such clause—

(i) by striking "the previous sentence" and inserting "clause (i) with respect to the sale of a medicare supplemental policy", and

(ii) by striking "and the statement" and all that follows up to the period at the end; and

(D) by striking the last sentence.

(2) Section 1882(d)(3)(B) (42 U.S.C. 1395ss(d)(3)(B)) is amended—

(A) in clause (ii)(II), by striking "65 years of age or older",

(B) in clause (iii)(I), by striking "another medicare" and inserting "a medicare",

(C) in clause (iii)(I), by striking "such a policy" and inserting "a medicare supplemental policy",

(D) in clause (iii)(II), by striking "another policy" and inserting "a medicare supplemental policy", and

(E) by amending subclause (III) of clause (iii) to read as follows:

"(III) If the statement required by clause (i) is obtained and indicates that the individual is entitled to any medical assistance under title XIX, the sale of the policy is not in violation of clause (i) (insofar as such clause relates to such medical assistance), if a State medicaid plan under such title pays the premiums for the policy, or, in the case of a qualified medicare beneficiary described in section 1905(p)(1), if the State pays less than the full amount of medicare cost-sharing as described in subparagraphs (B), (C), and (D) of section 1905(p)(3) for such individual.".

(3)(A) Section 1882(d)(3)(C) (42 U.S.C. 1395ss(d)(3)(C)) is amended—

(i) by striking "the selling" and inserting "(i) the sale or issuance", and

(ii) by inserting before the period at the end the following: ", (ii) the sale or issuance of a policy or plan described in subparagraph (A)(i)(I) (other than a medicare supplemental policy to an individual entitled to any medical assistance under title XIX) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual but only if (for policies sold or issued more than 60 days after the date the statements are published or promulgated under subparagraph (D)) there is disclosed in a prominent manner as part of (or together with) the application the applicable statement (specified under subparagraph (D)) of the extent to which benefits payable under the policy or plan duplicate benefits under this title, or (iii) the sale or issuance of a policy or plan described in subparagraph (A)(i)(III) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual".

(B) Section 1882(d)(3) (42 U.S.C. 1395ss(d)(3)) is amended by adding at the end the following:

"(D)(i) If—

"(I) within the 90-day period beginning on the date of the enactment of this subparagraph, the National Association of Insurance Commissioners develops (after consultation with consumer and insurance industry representatives) and submits to the Secretary a statement for each of the types of health insurance policies (other than medicare supplemental policies and including, as separate types of policies, policies paying directly to the beneficiary fixed, cash benefits) which are sold to persons entitled to health benefits under this title, of the extent to which benefits payable under the policy or plan duplicate benefits under this title, and

"(II) the Secretary approves all the statements submitted as meeting the requirements of subclause (I),

each such statement shall be (for purposes of subparagraph (C)) the statement specified under this subparagraph for the type of policy involved. The Secretary shall review and approve (or disapprove) all the statements submitted under subclause (I) within 30 days after the date of their submittal. Upon approval of such statements, the Secretary shall publish such statements.

"(ii) If the Secretary does not approve the statements under clause (i) or the statements are not submitted within the 90-day period specified in such clause, the Secretary shall promulgate (after consultation with consumer and insurance industry representatives and not later than 90 days after the date of disapproval or the end of such 90-day period (as the case may be)) a statement for each of the types of health insurance policies (other than medicare supplemental policies and including, as separate types of policies, policies paying directly to the beneficiary fixed, cash benefits) which are sold to persons entitled to health benefits under this title, of the

extent to which benefits payable under the policy or plan duplicate benefits under this title, and each such statement shall be (for purposes of subparagraph (C)) the statement specified under this subparagraph for the type of policy involved.".

(C) The requirement of a disclosure under section 1882(d)(3)(C)(ii) of the Social Security Act shall not apply to an application made for a policy or plan before 60 days after the date of the Secretary of Health and Human Services publishes or promulgates all the statements under section 1882(d)(3)(D) of such Act.

(4) Subparagraphs (A) and (B) of section 1882(q)(5)(A) are amended by striking "of the Social Security Act".

(5) The second subsection (b) of section 4354 of OBRA 1990 (relating to effective date) is amended by redesignating such subsection as subsection (c).

(e) LOSS RATIOS AND REFUNDS OF PREMIUMS.—

(1) Section 1882(r) (42 U.S.C. 1395ss(r)) is amended—

(A) in paragraph (1), by striking "or sold" and inserting "or renewed (or otherwise provide coverage after the date described in subsection (p)(1)(C))";

(B) in paragraph (1)(A), by inserting "for periods after the effective date of these provisions" after "the policy can be expected";

(C) in paragraph (1)(A), by striking "Commissioners," and inserting "Commissioners)";

(D) in paragraph (1)(B), by inserting before the period at the end the following: ", treating policies of the same type as a single policy for each standard package";

(E) by adding at the end of paragraph (1) the following: "For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C), the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all such policies issued by an insurer in a State (separated as to individual and group policies) and shall be based only on aggregate benefits provided and premiums collected under such policies after the date specified in section 10301(m)(4) of the Revenue Act of 1992.";

(F) in the first sentence of paragraph (2)(A), by striking "by policy number" and inserting "by standard package";

(G) by striking the second sentence of paragraph (2)(A) and inserting the following: "Paragraph (1)(B) shall not apply to a policy until 12 months following issue.";

(H) in the last sentence of paragraph (2)(A), by striking "in order" and all that follows through "are effective";

(I) by adding at the end of paragraph (2)(A), the following new sentence: "In the case of a policy issued before the date specified in subsection (p)(1)(C), paragraph (1)(B) shall not apply until 1 year after the date specified in section 10301(m)(4) of the Revenue Act of 1992.";

(J) in paragraph (2), by striking "policy year" each place it appears and inserting "calendar year";

(K) in paragraph (4), by striking "'February", 'dislowance", "loss-ratios" each place it appears, and "loss-ratio" and inserting "October", "disallowance", "loss ratios", and "loss ratio", respectively;

(L) in paragraph (6)(A), by striking "issues a policy in violation of the loss ratio requirements of this subsection" and "such violation" and inserting "fails to provide refunds or credits as required in paragraph (1)(B)" and "policy issued for which such failure occurred", respectively; and

(M) in paragraph (6)(B), by striking "to policyholders" and inserting "to the policyholder or, in the case of a group policy, to the certificate holder".

(2) Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is amended, in the matter after subparagraph (H), by striking "subsection (F)" and inserting "subparagraph (F)".

(3) Section 4355(d) of OBRA 1990 is amended by striking "sold or issued" and all that follows and inserting "issued or renewed (or otherwise providing coverage after the date described in section 1882(p)(1)(C) of the Social Security Act) on or after the date specified in section 1882(p)(1)(C) of such Act.".

(f) TREATMENT OF HMO's.—

(1) Section 1882(g)(1) (42 U.S.C. 1395ss(g)(1)) is amended by striking "a health maintenance organization or other direct service organization" and all that follows through "1833" and inserting "an eligible organization (as defined in section 1876(b)) if the policy or plan provides benefits pursuant to a contract under section 1876 or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 or, during the period beginning on the date specified in subsection (p)(1)(C) and ending on December 31, 1993, a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1833(a)(1)(A)".

(2) Section 4356(b) of OBRA 1990 is amended by striking "on the date of the enactment of this Act" and inserting "on the date specified in section 1882(p)(1)(C) of the Social Security Act".

(g) PRE-EXISTING CONDITION LIMITATIONS.—Section 1882(s) (42 U.S.C. 1395ss(s)) is amended—

(1) in paragraph (2)(A), by striking "for which an application is submitted" and inserting "in the case of an individual for whom an application is submitted prior to or",

(2) in paragraph (2)(A), by striking "in which the individual (who is 65 years of age or older) first is enrolled for benefits under part B" and inserting "as of the first day on which the individual is 65 years of age or older and is enrolled for benefits under part B", and

(3) in paragraph (2)(B), by striking "before it" and inserting "before the policy".

(h) MEDICARE SELECT POLICIES.—

(1) Section 1882(t) (42 U.S.C. 1395ss(t)) is amended—

(A) in paragraph (1), by inserting "medicare supplemental" after "If a",

(B) in paragraph (1), by striking "NAIC Model Standards" and inserting "1991 NAIC Model Regulation or 1991 Federal Regulation",

(C) in paragraph (1)(A), by inserting "or agreements" after "contracts",

(D) in subparagraphs (E)(i) and (F) of paragraph (1), by striking "NAIC standards" and inserting "standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation", and

(E) in paragraph (2), by inserting "the issuer" before "is subject to a civil money penalty".

(2) Section 1154(a)(4)(B) (42 U.S.C. 1320c 3(a)(4)(B)) is amended—

(A) by inserting "that is" after "(or", and

(B) by striking "1882(t)" and inserting "1882(t)(3)".

(i) HEALTH INSURANCE COUNSELING.—Section 4360 of OBRA 1990 is amended—

(1) in subsection (b)(2)(A)(ii), by striking "Act" and inserting "Act)";

(2) in subsection (b)(2)(D), by striking "services" and inserting "counseling";

(3) in subsection (b)(2)(I), by striking "assistance" and inserting "referrals";

(4) in subsection (c)(1), by striking "and that such activities will continue to be maintained at such level";

(5) in subsection (d)(3), by striking "to the rural areas" and inserting "eligible individuals residing in rural areas";

(6) in subsection (e)—

(A) by striking "subsection (c) or (d)" and inserting "this section",

(B) by striking "and annually thereafter, issue an annual report" and inserting "and annually thereafter during the period of the grant, issue a report",

(C) in paragraph (1), by striking "State-wide", and

(D) in subsection (f), by striking paragraph (2) and by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and

(7) by redesignating the second subsection (f) (relating to authorization of appropriations for grants) as subsection (g).

(j) TELEPHONE INFORMATION SYSTEM.—

(1) Section 1804 (42 U.S.C. 1395b 2) is amended—

(A) by adding at the end of the heading the following: "; MEDICARE AND MEDIGAP INFORMATION",

(B) by inserting "(a)" after "1804.", and

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

"(b) The Secretary shall provide information via a toll-free telephone number on the programs under this title.".

(2) Section 1882(f) (42 U.S.C. 1395ss(f)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide information via a toll-free telephone number on medicare supplemental policies (including the relationship of State programs under title XIX to such policies).".

(3) Section 1889 is repealed.

(k) MAILING OF POLICIES.—Section 1882(d)(4) (42 U.S.C. 1395ss(d)(4)) is amended—

(1) in subparagraph (D), by striking ", if such policy" and all that follows up to the period at the end, and

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

"(E) Subparagraph (A) shall not apply in the case of an issuer who mails or causes to be mailed a policy, certificate, or other matter solely to comply with the requirements of subsection (q).".

(l) EFFECTIVE DATE.—The amendments made by this section shall be effective as if included in the enactment of OBRA 1990; except that—

(1) the amendments made by subsection (d)(1) shall take effect on the date of the enactment of this Act, but no penalty shall be imposed under section 1882(d)(3)(A) of the Social Security Act (for an action occurring after the effective date of the amendments made by section 4354 of OBRA 1990 and before the date of the enactment of this Act) with respect to the sale or issuance of a policy which is not unlawful under section 1882(d)(3)(A)(i)(II) of the Social Security Act (as amended by this section);

(2) the amendments made by subsection (d)(2)(A) and by subparagraphs (A), (B), and (E) of subsection (e)(1) shall be effective on the date specified in subsection (m)(4); and

(3) the amendment made by subsection (g)(2) shall take effect on January 1, 1993, and shall apply to individuals who attain 65 years of age or older on or after the effective date of section 1882(s)(2) of the Social Security Act (and, in the case of individuals who attained 65 years of age after such effective date and before January 1, 1993, and who were not covered under such section before January 1, 1993, the 6-month period specified in that section shall begin January 1, 1993).

(m) TRANSITION PROVISIONS.—

(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

(2) NAIC STANDARDS.—If, within 6 months after the date of the enactment of this Act, the National Association of Insurance Commissioners (in this subsection referred to as the "NAIC") modifies its 1991 NAIC Model Regulation (adopted in July 1991) to conform to the amendments made by this section and to delete from section 15C the exception which begins with "unless", such modifications shall be considered to be part of that Regulation for the purposes of section 1882 of the Social Security Act.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such modifications shall be considered to be part of

that Regulation for the purposes of section 1882 of the Social Security Act.

(4) DATE SPECIFIED.—

(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

(ii) 1 year after the date the NAIC or the Secretary first makes the modifications under paragraph (2) or (3), respectively.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

(ii) having a legislature which is not scheduled to meet in 1994 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1994. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

TITLE XI—AUTHORIZATION FOR ADDITIONAL ASSISTANCE TO DISTRESSED COMMUNITIES

Subtitle A—National Public-Private Partnership Programs

SEC. 11001. NATIONAL PUBLIC-PRIVATE PARTNERSHIP PROGRAMS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that public-private partnerships between government and community-based organizations offer an opportunity to empower residents of low-income distressed communities and to forge innovative solutions to the challenges confronting these communities, and that increased resources should be invested in such partnerships.

(b) AUTHORIZATION OF APPROPRIATIONS.—To promote national public-private partnerships, there are authorized to be appropriated—

(1) with respect to the Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.)—

(A) $40,000,000 for fiscal year 1993;

(B) $42,000,000 for fiscal year 1994;

(C) $44,000,000 for fiscal year 1995;

(D) $46,000,000 for fiscal year 1996;

(E) $49,000,000 for fiscal year 1997;

(F) $51,000,000 for fiscal year 1998;
(G) $54,000,000 for fiscal year 1999;
(H) $56,000,000 for fiscal year 2000;
(I) $59,000,000 for fiscal year 2001; and
(J) $62,000,000 for fiscal year 2002;

(2) with respect to the community health centers program under sections 329, 330, 340 and 340A of the Public Health Service Act (42 U.S.C. 254c)—

(A) $20,000,000 for fiscal year 1993;
(B) $21,000,000 for fiscal year 1994;
(C) $22,000,000 for fiscal year 1995;
(D) $23,000,000 for fiscal year 1996;
(E) $24,000,000 for fiscal year 1997;
(F) $26,000,000 for fiscal year 1998;
(G) $27,000,000 for fiscal year 1999;
(H) $28,000,000 for fiscal year 2000;
(I) $30,000,000 for fiscal year 2001; and
(J) $31,000,000 for fiscal year 2002;

(3) with respect to the National Community Economic Partnership program established under chapter 3 of subtitle C—

(A) $40,000,000 for fiscal year 1993;
(B) $42,000,000 for fiscal year 1994;
(C) $44,000,000 for fiscal year 1995;
(D) $46,000,000 for fiscal year 1996;
(E) $49,000,000 for fiscal year 1997;
(F) $51,000,000 for fiscal year 1998;
(G) $54,000,000 for fiscal year 1999;
(H) $56,000,000 for fiscal year 2000;
(I) $59,000,000 for fiscal year 2001; and
(J) $62,000,000 for fiscal year 2002;

(4) with respect to the Job Corps program under part B of title IV of the Job Training Partnership Act (29 U.S.C. 1692 et seq.)—

(A) $40,000,000 for fiscal year 1993;
(B) $42,000,000 for fiscal year 1994;
(C) $44,000,000 for fiscal year 1995;
(D) $46,000,000 for fiscal year 1996;
(E) $49,000,000 for fiscal year 1997;
(F) $51,000,000 for fiscal year 1998;
(G) $54,000,000 for fiscal year 1999;
(H) $56,000,000 for fiscal year 2000;
(I) $59,000,000 for fiscal year 2001; and
(J) $62,000,000 for fiscal year 2002;

(5) with respect to the Enterprise Capital Access Fund Demonstration Program established under section 11261—

(A) $20,000,000 for fiscal year 1993;
(B) $21,000,000 for fiscal year 1994;
(C) $22,000,000 for fiscal year 1995;
(D) $23,000,000 for fiscal year 1996;
(E) $24,000,000 for fiscal year 1997;
(F) $26,000,000 for fiscal year 1998;
(G) $27,000,000 for fiscal year 1999;
(H) $28,000,000 for fiscal year 2000;
(I) $30,000,000 for fiscal year 2001; and

(J) $31,000,000 for fiscal year 2002;

(6) with respect to the Youthbuild program under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act—

(A) $10,000,000 for fiscal year 1993;
(B) $11,000,000 for fiscal year 1994;
(C) $11,000,000 for fiscal year 1995;
(D) $12,000,000 for fiscal year 1996;
(E) $12,000,000 for fiscal year 1997;
(F) $13,000,000 for fiscal year 1998;
(G) $13,000,000 for fiscal year 1999;
(H) $14,000,000 for fiscal year 2000;
(I) $15,000,000 for fiscal year 2001; and
(J) $16,000,000 for fiscal year 2002; and

(7) with respect to the Neighborhood Reinvestment Corporation established under title VI of the Housing and Community Development Act of 1978—

(A) $10,000,000 for fiscal year 1993;
(B) $11,000,000 for fiscal year 1994;
(C) $11,000,000 for fiscal year 1995;
(D) $12,000,000 for fiscal year 1996;
(E) $12,000,000 for fiscal year 1997;
(F) $13,000,000 for fiscal year 1998;
(G) $13,000,000 for fiscal year 1999;
(H) $14,000,000 for fiscal year 2000;
(I) $15,000,000 for fiscal year 2001; and
(J) $16,000,000 for fiscal year 2002.

(c) AVAILABILITY OF AMOUNTS.—The amounts appropriated for programs pursuant to paragraphs (1), (2), (4), (6), and (7) of subsection (b) shall be available only for projects or activities that directly and principally benefit the residents of tax enterprise zones designated pursuant to section 1391 of the Internal Revenue Code of 1986. Of the amounts appropriated for programs pursuant to paragraphs (3) and (5) of subsection (b), 50 percent shall be available only for projects or activities that directly and principally benefit the residents of such zones.

Subtitle B—Block Grant Funding for Eligible Programs

SEC. 11101. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for assistance under section 11102, $320,000,000 for fiscal year 1993, $325,000,000 for fiscal year 1994, $332,000,000 for fiscal year 1995, $337,000,000 for fiscal year 1996, $341,000,000 for fiscal year 1997, and such sums as may be necessary for each of the fiscal years 1998 through 2002, except that amounts authorized under this subsection for each of the fiscal years 1998 through 2002 shall not be less than the amount of the revenue loss estimates to result as a result of enterprise zone tax preferences under section 1391 of the Internal Revenue code of 1986 less the amounts authorized by section 11101(b).

SEC. 11102. ALLOCATION OF AMOUNTS AMONG TAX ENTERPRISE ZONES.

(a) IN GENERAL.—Except as provided in subsection (d), the interagency council established under section 11106 of this Act shall make any amounts appropriated pursuant to section 11101(a) available under this subtitle to provide assistance on behalf of each tax enterprise zone designated under section 1391 of the Internal Revenue Code of 1986 for which an application under section 11105 of this Act has been approved by the interagency council.

(b) ALLOCATION BETWEEN URBAN AND RURAL ZONES.—Of the amounts available each fiscal year under this title for tax enterprise zones, 70 percent shall be available for urban tax enterprise zones and 30 percent shall be available for rural development investment zones.

(c) DIVISION AMONG URBAN AND RURAL ZONES.—

(1) URBAN ZONES.—The amounts available each fiscal year under this title for urban tax enterprise zones shall be allocated so as to reserve an equal amount for each urban zone that may be designated prior to the end of the calendar year beginning during the fiscal year for which such amounts were made available, pursuant to the annual limits on zones specified in section 1391 of the Internal Revenue Code of 1986.

(2) RURAL ZONES.—The amounts available each fiscal year under this title for rural development investment zones shall be allocated so as to reserve an equal amount for each rural development investment zone that may be designated prior to the end of the calendar year beginning during the fiscal year for which such amounts were made available, pursuant to the annual limits on zones specified in section 1391 of the Internal Revenue Code of 1986.

(d) SET-ASIDE.—Of the amounts appropriated pursuant to section 11101 for fiscal year 1993, not less than $5,000,000 shall be made available by the Interagency Council for the Access to Jobs/Reverse Community Demonstration Program authorized under section 11207.

(e) AVAILABILITY.—Notwithstanding any other provision of law, amounts appropriated pursuant to authorizations under this title shall remain available until the end of the fiscal year following the year for which such amounts are appropriated.

SEC. 11103. USE OF AMOUNTS.

(a) IN GENERAL.—The assistance allocated under section 11102 on behalf of each tax enterprise zone (as defined in section 1391 of the Internal Revenue Code of 1986) shall be available only for carrying out selected programs within the tax enterprise zone, in accordance with the application of the tax enterprise zone approved under section 11105 and subject to the provisions of this section.

(b) ALLOCATION AMONG PROGRAM CATEGORIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), of the total amount of assistance provided under this subtitle on behalf of a tax enterprise zone for any fiscal year, the sum of the amounts used to carry out selected programs referred to under any one of paragraphs (1) through (5) of section 11104 may not exceed 20 percent of such total amount.

(2) WAIVER OF CAPS.—Pursuant to a request contained in an application under section 11105, the interagency council may provide that the requirement under paragraph (1) shall not apply with respect to amounts used to carry out selected programs under the application, except that of the total amount of assistance provided under this subtitle on behalf of such tax enterprise zone for any fiscal year, the sum of the amounts used to carry out selected programs referred to under any single paragraph under section 11104 may not exceed 30 percent of such total amount and may not be less than 5 percent of such total amount.

(c) ALLOCATION AMONG JOB TRAINING PROGRAMS.—In any fiscal year, of the sum of the amounts of assistance provided under this subtitle on behalf of a tax enterprise zone that are used to carry out any of the job training programs under section 11104(2), not less than 25 percent shall be used for assistance under the Young Adult Employment Demonstration program referred to in section 11104(2)(A) of this Act.

(d) PROVISION OF ASSISTANCE.—Upon the approval of an application under section 11105 for a tax enterprise zone, the appropriate Federal agency head for each selected program under the approved application shall make available on behalf of the enterprise zone (under such program and through the appropriate eligible entity), from amounts available on behalf of such zone pursuant to section 11102, the amount of assistance determined in accordance with the approved application.

(e) SUPPLEMENTATION REQUIREMENT.—Any amounts provided under this subtitle shall be in supplement to, and shall not supplant, any Federal, State, local, or private funds from other sources already used, or committed for use, for programs, projects, activities, and services assisted under this subtitle or comparable to such programs, projects, activities, and services. Federal agency heads shall not reduce the usual allocations with respect to any jurisdiction under any of the eligible programs described in section 11104 because such jurisdiction allocates funds under this title to any of such programs.

SEC. 11104. ELIGIBLE PROGRAMS.

Assistance may be provided under this subtitle for carrying out the following activities, projects, and programs:

(1) CRIME AND CRIMINAL JUSTICE.—

(A) Community policing projects and activities under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program under part E of title I of the Omnibus Crime Control and Safe streets Act of 1968 (42 U.S.C. 3751 et seq.), but only if the Community Policing; Cop on the Beat Act of 1991 is not enacted by November 1, 1992. If the Community Policing; Cop on the Beat Act of 1991 is enacted prior to November 1, 1992, funds under this subtitle shall be available through the Community Policing; Cop on the Beat Act of 1991.

(B) Chapter B of subpart 2 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968.

(C) Projects and activities under chapter 1 of subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801 et seq.) but only if the Juvenile Justice and Delinquency Act of 1974 is not amended to provide for Juvenile Drug Trafficking Grants and Gang Prevention Grants prior to November 1, 1992. If the Juvenile Justice and Delinquency Act of 1974 is so amended prior to such date, funds under this subtitle shall be made available through the Juvenile Drug Trafficking Grants and Gang Prevention Grants.

(2) JOB TRAINING.—

(A) The Young Adult Employment Demonstration program under part K of title IV of the Job Training Partnership Act (as added by section 11211 of this Act).

(B) The Job Corps program under part B of title IV of the Job Training Partnership Act (29 U.S.C. 1691 et seq.).

(C) Title II of the Job Training Partnership Act (29 U.S.C. 1601 et seq.).

(D) The American Conservation and Youth Corps program under subtitle C of title I of the National and Community Service Act of 1990 (42 U.S.C. 12541 et seq.).

(E) The Access to Jobs/Reverse Commuting Demonstration Program established under section 11263.

(3) EDUCATION.—

(A) The programs under the Carl D. Perkins Vocational Educational and Applied Technology Education Act (20 U.S.C. 2301 et seq.).

(B) Projects under the Comprehensive Child Development Act (42 U.S.C. 9881 et seq.).

(C) Activities under the Child Care and Development Block Grant Act (42 U.S.C. 9858 et seq.).

(D) The programs under chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(E) The TRIO programs under part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(F) The programs under the Adult Education Act (20 U.S.C. 1201 et seq.).

(G) Literacy activities authorized under the National Literacy Act of 1991.

(4) HEALTH, NUTRITION AND FAMILY ASSISTANCE.—

(A) The special supplemental food program for women, infants, and children under section 17 of the Child Nutrition Act of 1966.

(B) The following programs under the Public Health Service Act (42 U.S.C. 201 et seq.):

(i) Capacity expansion of substance abuse treatment facilities.

(ii) Substance abuse treatment for individuals under criminal justice supervision.

(iii) Substance abuse treatment for pregnant and postpartum women.

(iv) Community prevention grants regarding substance abuse.

(v) Substance abuse treatment improvement grants.

(C) The programs under title XXVI of the Public Health Service Act (42 U.S.C. 300ff-21 et seq.)

(D) The family support programs under subtitle F of title VII of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 1148 et seq.).

(E) Projects for high risk youth under section 517 of the Public Health Service Act (42 U.S.C. 290bb-23).

(F) Emergency child protective service grants under section 107 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a).

(G) Family support centers and family resource and support programs under sections 933 and 934(d) of the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Public Law 101-501).

(5) HOUSING AND COMMUNITY DEVELOPMENT.—

(A) The community development block grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

(B) The public and Indian housing modernization program under section 14 of the United States Housing Act of 1937 (42 U.S.C. 14371).

(C) The public and assisted housing drug elimination program under chapter 2 of subtitle C of title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et seq.).

(D) Contracts for rental assistance attached to structures pursuant to paragraph (2) of section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(E) The HOME investment partnership program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 et seq.).

(F) The self-help housing technical assistance grant program under section 523 of the Housing Act of 1949 (42 U.S.C. 1490c).

(G) Rural housing preservation grants under section 533 of the Housing Act of 1949 (42 U.S.C. 1490m).

(H) Rural rental housing loans under section 515 of the Housing Act of 1949 (42 U.S.C. 1485).

(I) Rural rental housing assistance payments under section 521(a)(2) of the Housing Act of 1949 (42 U.S.C. 1490a).

(J) Rural water and waste disposal grants pursuant to paragraphs (2) and (6) of section 306(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)) and water and waste facility loans and grants under section 306C of such Act.

(K) Private business enterprise grants under section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926).

(L) Loan guarantees under section 108 of the Housing and Community Development Act (as amended by section 11202 of this Act).

(M) Outreach and assistance for socially disadvantaged farmers and ranchers under section 2501 of the Food, Agriculture, and Trade Act of 1990.

(N) Public Housing Family Investment Centers under section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t).

SEC. 11105. APPLICATION FOR FUNDING.

(a) ESTABLISHMENT OF APPLICATION PROCESS.—The interagency council shall establish, by regulation, a procedure for a single comprehensive application to be submitted to the council for each tax enterprise zone designated under section 1391 of the Internal Revenue Code of 1986 for the purpose of making amounts available under this subtitle on behalf of such tax enterprise zones. The interagency council shall provide for the form and manner of such applications, and shall require the applications to be made by the State, unit of local government, or economic development agency chartered by the State that submitted the nomination for designation of the area designated as a tax enterprise zone and submitted promptly after such designation.

(b) LOCAL COORDINATION.—

(1) PURPOSES.—The interagency council shall provide that each application under this section shall be developed in coordination and consultation with a local coordinating board under paragraph (2), which shall ensure that the programs, projects, activities, and services under section 11104(1) carried out with amounts provided under this subtitle are sufficiently coordinated with the other programs, projects, activities, and services assisted under this subtitle, and that all such programs, projects, activities, and services are coordinated with law enforcement efforts within the area nominated for designation as a tax enterprise zone.

(2) MEMBERSHIP.—The local coordinating board referred to in paragraph (1) shall include representatives of units of local government within such area, representatives of law enforcement agencies having jurisdiction within such area, residents of the area, community leaders, including local business persons, bankers, architects and planners, representatives of school boards, and representatives of nonprofit community-based organizations such as community development corporations and community action agencies.

(c) CONTENTS.—Each application under the procedure established under this section shall contain the following information:

(1) A list of the programs referred to under section 11104 for which funding is requested and a general description of the types of activities to be carried out with such assistance.

(2) A statement documenting the percentage of the total amount of any funding received under this subtitle that will be used for each selected program.

(3) A statement documenting the entities that will receive any assistance provided for the selected programs on behalf of the tax enterprise zone and the entities' eligibility for such assistance.

(4) A statement documenting the membership of the local coordinating board organized pursuant to the requirement under subsection (b) and describing the coordination between the programs, projects, activities, and services assisted under

this title and local law enforcement efforts in the tax enterprise zone.

(5) A request for any waiver of the requirement under section 11103(b)(1) and a statement documenting the rationale for such waiver.

(6) A statement documenting any other Federal, State, and local resources for the community in which the tax enterprise zone is located that will be dedicated to the types of programs, projects, activities, and services to be assisted under this subtitle.

(7) A statement documenting a strong commitment by community-based organizations in the tax enterprise zone for carrying out the selected programs and similar programs, projects, activities, and services.

(8) A statement documenting any private sector resources, including corporate contributions and individual commitments, to supplement assistance provided under this subtitle.

(9) A statement documenting the efforts made by the local jurisdiction containing the tax enterprise zone to encourage local financial institutions to satisfy their obligations under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) by making loans to enterprise zone businesses with emphasis on startup and other small business concerns (as defined in section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the commitments made by local financial institutions in response to these efforts.

(10) A statement demonstrating a balanced, comprehensive plan for the tax enterprise zone, that addresses removing violent offenders from the neighborhood streets, supports drug and crime prevention, improves health, education and other social services, and promotes neighborhood revitalization through strategies to create jobs and other economic opportunities which assist families to become self sufficient. Such strategies shall include improvements in infrastructure, public facilities, and affordable housing opportunities embodying good urban design and neighborhood planning principles that contribute to the creation of wholesome and attractive social, economic, and physical environments.

(11) A statement demonstrating that any amounts requested for selected programs are part of an integrated and comprehensive plan for the use of Federal, State, local, and private resources to accomplish specific goals and measurable outcomes for neighborhood revitalization.

(d) REVIEW.—In reviewing each application submitted under this section, each member of the council shall review the portion of the application concerning any request or eligibility for assistance under any selected program under the jurisdiction of such member to determine whether providing assistance under this subtitle pursuant to such application will comply with the laws and regulations applicable to such program.

(e) APPROVAL AND DISAPPROVAL.—

(1) TIMING.—The council shall review each application promptly upon receipt and shall approve or disapprove the ap-

plication not later than the expiration of the 30-day period beginning upon such receipt.

(2) STANDARDS FOR APPROVAL.— The council shall approve an application if the council determines that the assistance requested for the selected programs under the application will assist in the economic development of the tax enterprise zone, that the eligible entities identified in the application are capable and qualified to receive and administer the assistance pursuant to the application, and that the information, documentation, or evidence required under subsection (c) is sufficient in the determination of the council.

(3) DISAPPROVAL AND RESUBMISSION.—If, pursuant to review under this section, the council determines that the application of a tax enterprise zone is incomplete or unsatisfactory, the council shall, before the expiration of the period referred to in paragraph (1)—

(A) notify the entity submitting the application of the reasons for the failure to approve the application;

(B) notify the entity submitting the application that the application may be resubmitted during the period referred to in subparagraph (C); and

(C) permit such entity to resubmit a corrected or amended application during the 30-day period beginning on notification under this paragraph.

(4) REVIEW OF RESUBMITTED APPLICATION.—The council shall review and approve or disapprove any application resubmitted under paragraph (3) before the expiration of the 15-day period beginning upon such resubmission. Any application resubmitted under paragraph (3) that is disapproved may be resubmitted before the expiration of the 15-day period beginning upon such disapproval and shall be subject to review under the provisions of this paragraph.

(f) PUBLIC COMMENT.—An applicant under this section, in conjunction with the relevant local coordinating board, shall ensure that there are adequate opportunities for public comment concerning the application submitted under this section, including—

(1) furnishing citizens with information concerning the amount of funds available pursuant to this subtitle and the range of activities that may be undertaken with such funds;

(2) holding one or more public hearings to obtain the views of citizens on community needs; and

(3) providing citizens with reasonable access to any application filed pursuant to this section and to records regarding the use of funds received pursuant to this subtitle.

SEC. 11106. INTERAGENCY COUNCIL.

(a) ESTABLISHMENT.—There is hereby established an interagency council to provide assistance under this subtitle.

(b) MEMBERSHIP.—The members of the council shall be the Secretary of Agriculture, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Labor, the Director of the Office of National Drug Control Policy, the Attorney General of the United

States and the Chairperson of the Commission on National and Community Service.

(c) DUTIES.—The council shall—

(1) review and approve applications submitted under section 11105;

(2) direct the appropriate Federal agency head to provide assistance under the selected programs under approved applications using amounts available pursuant to this subtitle; and

(3) carry out any other responsibilities of the council as provided under this subtitle.

SEC. 11107. DEFINITIONS.

For purposes of this subtitle:

(1) The term "appropriate Federal agency head" means, with respect to each program referred to in section 11104, the head of the Federal agency or other Federal official responsible for administering such program.

(2) The term "approved application" means an application under section 11105 for assistance provided under this subtitle that is approved by the interagency council and which meets the public comment requirements under section 11105(f).

(3) The term "eligible entity" means, with respect to a selected program under an application under section 11105, an entity in the tax enterprise zone that is eligible to receive and administer amounts under the program and is designated under the application to receive and administer amounts provided for the program pursuant to this subtitle.

(4) The terms "interagency council" and "council" mean the interagency council established under section 11106.

(5) The term "selected program" means, with respect to a tax enterprise zone, any of the programs identified in an application under section 11105 for which funding under this subtitle is requested.

(6) The term "tax enterprise zone" means an urban tax enterprise zone, a rural development investment zone designated under section 1391 of the Internal Revenue Code of 1986.

SEC. 11108. STUDY AND REPORT.

(a) GENERAL STUDY.—The council shall conduct a study to identify—

(1) any alternative methods or systems for allocation of amounts made available pursuant to this subtitle among tax enterprise zones; and

(2) any problems experienced in the implementation and administration of the provisions of this subtitle, including identification of any provisions of law or regulations relating to the programs referred to in section 11104 for which a waiver would facilitate carrying out the purposes of this subtitle.

(b) REPORT.—Not later than the expiration of the 1-year period beginning on the date of the enactment of this Act, the council shall submit to the Congress a report regarding the study conducted under subsection (a), which shall include any recommendations for improving the program for assistance under this subtitle.

SEC. 11109. REGULATIONS.

The council shall issue any regulations necessary to carry out this subtitle not later than the expiration of the 60-day period beginning on the date of the enactment of this Act.

Subtitle C—Other Programs

CHAPTER 1—COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

SEC. 11201. WAIVER OF PUBLIC SERVICES CAP UNDER COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

Section 105(a)(8) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)) is amended—

(1) by inserting "(A)" before "unless such unit"; and

(2) by inserting before the semicolon at the end the following: ", or (B) unless unit of general local government is located within or contains a tax enterprise zone (as designated under section 1391 of the Internal Revenue Code of 1986), in which case such unit of general local government may use, in addition to such 15 percent of the amount of any assistance provided to the unit (or in the case of nonentitled communities, 15 percent statewide) under this title, including program income, an additional 15 percent of such amount of assistance for activities under this paragraph within such enterprise zone".

SEC. 11202. EMERGENCY COMMUNITY DEVELOPMENT LOAN GUARANTEE AUTHORITY.

Section 108 of the Housing and Community Development Act of 1974 is amended by adding at the end thereof the following new subsection:

"(q) In addition to amounts provided under subsection (a), the Secretary may enter into commitments during each of the fiscal years 1993 through 1997 to guarantee notes and obligations with an aggregate principal amount in each fiscal year of $2,000,000,000. The guarantee authority under this subsection shall be effective only to the extent approved or provided for in appropriations Acts, subject only to the absence of qualified applicants or proposed activities and the provisions of this Act, except that the provisions of subsection (k) shall not apply with respect to any guarantees and commitments to guarantee pursuant to authority provided under this subsection.".

CHAPTER 2—YOUNG ADULT EMPLOYMENT DEMONSTRATION PROGRAM

SEC. 11211. ESTABLISHMENT OF YOUNG ADULT EMPLOYMENT DEMONSTRATION PROGRAM.

(a) In General.—Title IV of the Job Training Partnership Act (29 U.S.C. 1671 et seq.) is amended by adding at the end the following new part:

"PART K—YOUNG ADULT EMPLOYMENT DEMONSTRATION PROGRAM

"SEC. 499I. STATEMENT OF PURPOSE.

"It is the purpose of the Young Adult Employment Demonstration program under this part to—

"(1) ensure access to education and job training assistance for youth and young adults residing in tax enterprise zones;

"(2) make provisions for a comprehensive range of education, training, and employment services to disadvantaged youth and young adults in tax enterprise zones who are not currently served or are underserved by Federal education and job training programs;

"(3) enable communities located in or containing tax enterprise zones to establish and meet goals for improving the opportunities available to youth and young adults within the tax enterprise zone; and

"(4) facilitate the coordination of comprehensive services to serve such youth and young adults.

"SEC. 499J. PROGRAM AUTHORIZED.

"(a) ESTABLISHMENT OF PROGRAM.—The Secretary is authorized to establish a program of Young Adult Employment Demonstration grants to provide comprehensive services to youth and young adults living in tax enterprise zones.

"(b) ELIGIBILITY FOR GRANTS.—

"(1) RECIPIENTS.—The Secretary may only award grants under this part to—

"(A) the participating community for a target area that is located with in a service delivery area; or

"(B) grantees designated under sections 401 and 402, or a consortium of such grantees and the State, when the target area is located in an Indian reservation, Alaskan Native village, or migrant or seasonal farmworker community.

"(2) NUMBER OF GRANTS.—The Secretary may award not more than 25 grants during the first fiscal year the program is authorized.

"(c) RENEWABILITY OF GRANTS.—Grants awarded under this part shall be for a 1-year period and shall be renewable for each of the 2 succeeding fiscal years if the Secretary determines the grant recipient complied with conditions of the grant during the previous fiscal year.

"(d) FACTORS FOR AWARDS.—In awarding grants under this part, the Secretary shall consider the quality of the proposed project, the goals to be achieved, the likelihood of the project's successful implementation, the extent of community support and other Federal and non-Federal funds available for similar purposes, and the new State, local, or private resources.

"(e) SELECTION REQUIREMENTS.—In awarding grants under subsection (b), the Secretary shall not approve an application unless the application contains assurances that the applicant will use funds from a grant to provide job training, education, services, stipends

(only to individuals age 17 to 30), and needs-related payments in accordance with sections 499K and 499L.

"SEC. 499K. APPLICATION.

"(a) ELIGIBILITY TO APPLY.—Participating communities shall be eligible to apply for a Young Adult Employment Demonstration grant under this part.

"(b) CONTENTS OF APPLICATION.—Each participating community desiring a grant under this part shall, through the individuals described in subsection (c), submit an application to the Secretary at such time in such manner and accompanied by such information as the Secretary may reasonably require. Each such application shall—

"(1) include a comprehensive plan for the Young Adult Employment Demonstration initiative designed to achieve identifiable goals for youth and young adults in the target area;

"(2) set forth measurable program goals and outcomes, which may include increasing the proportion of—

"(A) youth completing high school or its equivalent,

"(B) youth and young adults entering into postsecondary institutions, apprenticeships, or other advanced training programs;

"(C) youth and young adults placed in jobs; or

"(D) eligible youth and young adults participating in education, training, and employment services;

"(3) include supporting goals for the target area such as increasing security and safety, or reducing the number of drug-related arrests;

"(4) provide assurances that the conditions set forth in section 499L will be met;

"(5) demonstrate how the participating community will make use of the resources, expertise, and commitment of institutions of higher education, educational agencies, and vocational and technical schools and institutes;

"(6) attempt to ensure that all youth and young adults in the target areas have access to a coordinated and comprehensive range of education and training opportunities which serve the broadest range of interests and needs of youth and young adults and simultaneously mobilize the diverse range of education and training providers in the participating community;

"(7) include support services necessary for successful participation by eligible youth and young adults, including child care, transportation, and assistance in resolving personal or family crises such as those related to substance abuse, homelessness, migration, and family violence;

"(8) include a system of common intake, individualized assessment, and case management;

"(9) include an estimate of the expected number of youth and young adults in the target area to be served;

"(10) include a description of the resources available in the participating community from private, local government, State and Federal sources which will be used to achieve the goals of the program;

"(11) provide evidence of support for accomplishing the stated goals of the participating community from—

"(A) *local elected officials,*
"(B) *the local school system,*
"(C) *postsecondary education and training institutions,*
"(D) *the applicable private industry council,*
"(E) *local community leaders,*
"(F) *business,*
"(G) *labor organizations, and*
"(H) *other appropriate organizations; and*

"(12) *provide assurances that the target area includes, to the maximum extent possible, the poorest neighborhoods in the community, such as those with substantial numbers of public housing facilities.*

"(c) SUBMISSION OF APPLICATION.—*The application for funds for a participating community may only be submitted to the Secretary by—*

"(1) *the mayor of a city or the chief elected official in a metropolitan statistical area, after the Governor of the State has had an opportunity to comment on the application;*

"(2) *the chief elected official of a nonmetropolitan county or the designated chief elected official of contiguous nonmetropolitan counties, after the Governor of the State has had an opportunity to comment on the application; or*

"(3) *the grantee designated under sections 401 or 402, or jointly by the grantee and the Governor or the State in which such grantee is located, in applications for Native American or migrant or seasonal worker communities.*

"SEC. 499L. GRANT AGREEMENT.

"*Each grant recipient under this part shall enter into an agreement with the Secretary. Each such agreement shall describe how—*

"(1) *the recipient will designate a target area that will be the focus of the demonstration project and which shall have a population of not more than 25,000 (or upon approval of the Secretary, a population of not more than 75,000), except that in the event that the population of an area from which a high school draws a substantial portion of its enrollment exceeds this limit, the target area may encompass such boundary;*

"(2) *funds provided under this part will be used to support education, training, and supportive activities selected from a set of youth program models designated by the Secretary or from alternative models described in the application and approved by the Secretary, such as—*

"(A) *nonresidential learning centers;*
"(B) *alternative schools;*
"(C) *combined summer remediation, work experience and work readiness training, and school-to-work/apprenticeship/post-secondary education program;*
"(D) *teen parent programs;*
"(E) *special programs administered by community colleges;*
"(F) *youth centers;*
"(G) *initiatives aimed at increased rural student enrollment in post-secondary institutions;*

"(H) public-private collaborations to ensure private sector employment and continued learning opportunities for youth; and

"(I) initiatives that combine community and youth service opportunities with education and training activities;

"(3) funds received under this section will be used for services to youth and young adults age 14 to 30 at the time of enrollment;

"(4) the local educational agency and any other educational agency which operates secondary schools in the target area provide activities and resources to promote the educational goals specified in the application;

"(5) the participating community will provide activities and local resources to promote the goals specified in the application;

"(6) the participating community shall undertake outreach and recruitment efforts in the target area to encourage, to the maximum extent possible, participation by those disadvantaged youth and young adults who are currently unserved or underserved by education and training programs, including targeted measures specifically designed to enlist the participation of minority youth and young adults, particularly those under the jurisdiction of the child welfare, juvenile justice, and criminal justice systems;

"(7) the participating community will carry out special efforts to establish coordination with Federal, State, or local programs that serve the target population; and

"(8) funds provided under this part shall be used to pay stipends for participant support in paid work experience and classroom training programs when such programs are combined with other education and training activities.

"SEC. 499M. JOB GUARANTEES.

"(a) PROGRAM AUTHORITY.—The Secretary shall permit a number of the grant recipients under this part to enter into an agreement to provide, in accordance with this section, a job guarantee program to youth meeting prior school attendance and performance standards.

"(b) GUARANTEE AGREEMENTS.—A grant recipient providing a job guarantee program shall enter into an agreement with the Secretary. Such agreement shall—

"(1) provide that the program be available to youth aged 16 to 19 who undertake a commitment to continue and complete their high school education;

"(2) require the grant recipient to guarantee employment to each youth undertaking that commitment if such youth meets school attendance and performance standards for the previous school semester, as established by the Secretary in consultation with the Secretary of Education;

"(3) provide that the grant recipient will make additional services available to support the undertaking of any such youth, which shall include counseling, job development and placement, and support services (including child care and transportation);

"(4) specify the conditions under which funds provided under this part may be used to provide wage subsidies of up to 50 percent through employers, which shall—

"(A) encourage subsidies to employers who provide advanced or specialized training, or who provide a structured and integrated learning experience involving the school and employer; and

"(B) limit the duration of such subsidies to not more than 1 year;

"(5) require that the employment provided to any such youth shall not exceed 15 hours per week during the school year;

"(6) permit employment to continue through the summer following high school graduation, or until the youth reaches age 19, whichever is later; and

"(7) contain such other terms and conditions as the Secretary requires by regulation.

"(c) SELECTION OF GRANT RECIPIENTS.—In determining which grant recipients to permit to enter into an agreement under this section, the Secretary shall seek to target funds to high poverty areas.

"(d) YOUTH ELIGIBILITY.—All youth age 16 to 19, regardless of income, residing in the eligible high poverty area shall be eligible to participate in the job guarantee.

"(e) PRIVATE FUNDS.—Nothing in this section shall be construed to prohibit the grant recipient from raising funds to augment such grant if such funds are utilized under the conditions of this grant, except that such funds shall not be used for administration purposes.

"SEC. 499N. PAYMENTS AND MATCHING REQUIREMENT.

"(a) PAYMENTS.—In any fiscal year, the grant awarded under this part to a grant recipient shall be determined according to the amount to be provided for the program pursuant to designation of the program as a selected program under an application made on behalf of a tax enterprise zone under section 105 of the Revenue Act of 1992, and shall be of sufficient size and scope to carry out an effective program.

"(b) MATCHING REQUIREMENT.—A grant recipient shall provide non-Federal funds in an amount equal to 10 percent of the funds from such grant, an in-kind contribution equivalent to such percent (as determined by the Secretary), or a combination thereof.

"SEC. 499O. REPORTING.

"The Secretary is authorized to establish such reporting procedures as necessary to carry out the purposes of this part.

"SEC. 499P. FEDERAL RESPONSIBILITIES.

"(a) ASSISTANCE IN IMPLEMENTATION.—The Secretary shall provide technical assistance in the implementation of this project in participating communities.

"(b) INDEPENDENT EVALUATION.—The Secretary shall provide for a thorough, independent evaluation of the activities assisted under this part. Such evaluation shall include an assessment of—

"(1) the impact on youth and young adults residing in target areas, including their rates of school completion, enrollment in advanced education or training, and employment;

"(2) the extent to which participating communities fulfilled the goal of guaranteeing access to appropriate education, training, and supportive services to all eligible youth and young adults residing in target areas who seek to participate;

"(3) the effectiveness of guaranteed access to comprehensive services combined with outreach and recruitment efforts in enlisting the participation of previously unserved or underserved youth and young adults residing in target areas; and

"(4) the effectiveness of efforts to integrate service delivery in target areas, including systems of common intake, assessment, and case management.

"(c) REPORT.—The Secretary shall prepare a report describing the results of the independent evaluation conducted pursuant to subsection (b).

"(d) RESERVATION OF FUNDS.—The Secretary may reserve not more than 5 percent of the amounts to be used for assistance under this part in each fiscal year to carry out the provisions of this section.

"SEC. 499Q. DEFINITIONS.

"For the purposes of this part—

"(1) The term 'participating community' means—

"(A) a city, when referring to an urban area that is located within or contains a tax enterprise zone;

"(B) a nonmetropolitan county or contiguous nonmetropolitan counties, that is located within or contains a tax enterprise zone; and

"(C) a section 401 or 402 grantee, or consortia of the State and section 401 or 402 grantee, when referring to Indian reservation, Alaska Native village, and migrant or seasonal farmworker community, that are located within or contain a tax enterprise zone.

"(2) The term 'high poverty area' means (A) an urban census tract, a nonmetropolitan county, an Indian reservation, or an Alaskan Native village, with a poverty rate of 30 percent or more as determined by the Secretary based on the latest Bureau of the Census estimates, or (B) a migrant or seasonal farmworker community.

"(3) The term 'target area' means a high poverty area (or portion thereof) or set of contiguous high poverty areas, that is located within a tax enterprise zone and will be the focus of the program under this part in a participating community.

"(4) The term 'tax enterprise zone' has the meaning given the term in section 107 of the Revenue Act of 1992.".

(b) TECHNICAL AMENDMENTS.—The Job Training Reform Amendments of 1992 (Public Law 102-367) is amended—

(1) in section 406, by striking "adding at the end" and inserting "inserting after part G";

(2) in section 407, by striking "adding at the end" and inserting "inserting after part H"; and

(3) in section 408, by striking "adding at the end" and inserting "inserting after part I".

CHAPTER 3—NATIONAL COMMUNITY ECONOMIC PARTNERSHIP

SEC. 11221. SHORT TITLE; FINDINGS AND PURPOSE.

(a) SHORT TITLE.—This chapter may be cited as the "National Community Economic Partnership Act of 1992".

(b) FINDINGS.—Congress finds that

(1) the cities, towns, small communities and rural areas throughout the United States face critical social and economic problems arising in part from a lack of economic growth in community based economies;

(2) the crisis facing local economies has resulted in—

(A) a growing percentage of the workforce earning poverty level wages, even though they work full time and year round;

(B) the percentage of the labor force living below the poverty line increasing from 25.7 percent in 1979 to 31.5 percent in 1987;

(C) population losses, rising unemployment and a decline of the farm sector and of many other rural industries (such as timber, oil, gas, and mining) contribute to the decline of rural economies;

(D) with respect to rural areas, 31.9 percent of the workforce falling below the poverty line in 1979, with that percentage rising to 42.1 percent in 1987;

(E) with respect to urban areas, 23.4 percent of the workforce falling below the poverty line in 1979, with that percentage rising to 28.9 percent in 1987; and

(F) the average wage and salary income of the 90 percent of the population with the lowest incomes, between 1977 and 1988, falling 3.5 percent in contrast to the richest 1 percent of the population whose incomes more than doubled in that time period.

(3) the future well being of the United States and the well-being of its citizens depends on the establishment and maintenance of viable community development enterprises;

(4) meeting the goal of establishing and maintaining viable community development enterprises requires—

(A) increased public and private investment in business development activities, especially in the small business sector which generates the majority of new jobs as evidenced by the fact that between 1980 and 1986, enterprises with less than 100 employees accounted for more than 50 percent of the jobs created in the U.S.;

(B) increased investment and technical assistance to existing community based enterprises as evidenced by the fact that during the first half of the 1980's, more than 75 percent of the total net new jobs in the United States came from the expansion of existing businesses;

(C) a substantial expansion and greater continuity in the scope of Federal programs that support community based economic development strategies;

(D) the continuing efforts at Federal, State and local levels to coordinate the planning, implementation and evaluation of community economic development efforts; and

(E) the formation of a national commission, as an independent agency, to administer the various community development programs and serve as a focal point for Federal efforts to promote community based economic development; and

(5) community development corporations, due to their proven capacity and achievements in both the field of community based housing and economic development, are appropriate vehicles through which to advance a national community economic development program because—

(A) there are currently over 2000 community development corporations throughout the United States, operating projects that promote community based housing and economic development;

(B) community development corporations operate in every State and in virtually every major city in the United States, and account for many of the existing efforts undertaken to meet the needs of low income persons in both urban and rural communities;

(C) community development corporations have developed some 225,000 units of housing, with over 90 percent of these units for use by low income occupants;

(D) community development corporations have developed over 17,400,000 square feet of retail space, offices, industrial parks and other industrial developments in economically distressed communities;

(E) community development corporations have made loans to over 3000 enterprises, equity investments in 242 ventures and own and operate 427 businesses; and

(F) community development corporations commercial, industrial and business enterprise development activities have accounted for the creation and retention of nearly 90,000 jobs in the last five years.

(c) PURPOSE.—It is the purpose of this chapter to stimulate enterprise development in economically distressed urban and rural areas through public and private partnerships facilitated by community development corporations.

PART I—COMMUNITY ECONOMIC PARTNERSHIP INVESTMENT FUNDS

SEC. 11225. PURPOSE.

It is the purpose of this part to increase private investment in distressed local communities and to build and expand the capacity of local institutions to better serve the economic needs of local residents through the provision of financial and technical assistance to community development corporations.

SEC. 11226. PROVISION OF ASSISTANCE.

(a) AUTHORITY.—The Secretary of Health and Human Services (hereafter referred to in this chapter as the "Secretary") is authorized, in accordance with this part, to provide nonrefundable lines of credit to community development corporations for the establishment, maintenance or expansion of revolving loan funds to be utilized to finance projects intended to provide business and employment opportunities for low-income, unemployed, or underemployed individuals and to improve the quality of life in urban and rural areas.

(b) REVOLVING LOAN FUNDS.—

(1) COMPETITIVE ASSESSMENT OF APPLICATIONS.—In providing assistance under subsection (a), the Secretary shall establish and implement a competitive process for the solicitation and consideration of applications from eligible entities for lines of credit for the capitalization of revolving funds.

(2) ELIGIBLE ENTITIES.—To be eligible to receive a line of credit under this part an applicant shall—

(A) be a community development corporation;

(B) prepare and submit an application to the Secretary that shall include a strategic investment plan that identifies and describes the economic characteristics of the target area to be served, the types of business to be assisted and the impact of such assistance on low-income, underemployed, and unemployed individuals in the target area;

(C) demonstrate previous experience in the development of low-income housing or community or business development projects in a low-income community and provide a record of achievement with respect to such projects; and

(D) have secured one or more commitments from local sources for contributions (either in cash or in kind, letters of credit or letters of commitment) in an amount that is at least equal to the amount requested in the application submitted under subparagraph (B).

(3) EXCEPTION.—Notwithstanding the provisions of paragraph (2)(D), the Secretary may reduce local contributions to not less than 25 percent of the amount of the line of credit requested by the community development corporation if the Secretary determines such to be appropriate in accordance with section 11230.

SEC. 11227. APPROVAL OF APPLICATIONS.

(a) IN GENERAL.—In evaluating applications submitted under section 11226(b)(2)(B), the Secretary shall ensure that—

(1) the residents of the target area to be served (as identified under the strategic development plan) would have an income that is less than the median income for the area (as determined by the Secretary);

(2) the applicant community development corporation possesses the technical and managerial capability necessary to administer a revolving loan fund and has past experience in the development and management of housing, community and economic development programs;

(3) the applicant community development corporation has provided sufficient evidence of the existence of good working relationships with—

(A) local businesses and financial institutions, as well as with the community the corporation proposes to serve; and

(B) local and regional job training programs;

(4) the applicant community development corporation will target job opportunities that arise from revolving loan fund investments under this part so that 75 percent of the jobs retained or created under such investments are provided to—

(A) individuals with—

(i) incomes that do not exceed the Federal poverty line; or

(ii) incomes that do not exceed 80 percent of the median income of the area;

(B) individuals who are unemployed or underemployed;

(C) individuals who are participating or have participated in job training programs authorized under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) or the Family Support Act of 1988 (Public Law 100–485);

(D) individuals whose jobs may be retained as a result of the provision of financing available under this part; or

(E) individuals who have historically been underrepresented in the local economy; and

(5) a representative cross section of applicants are approved including, large and small community development corporations, urban and rural community development corporations and community development corporations representing diverse populations.

(b) PRIORITY.—In determining which application to approve under this part the Secretary shall give priority to those applicants proposing to serve a target area—

(1) with a median income that does not exceed 80 percent of the median for the area (as determined by the Secretary); and

(2) with a high rate of unemployment, as determined by the Secretary or in which the population loss is at least 7 percent from April 1, 1980, to April 1, 1990, as reported by the Bureau of the Census.

SEC. 11228. AVAILABILITY OF LINES OF CREDIT AND USE.

(a) APPROVAL OF APPLICATION.—The Secretary shall provide a community development corporation that has an application approved under section 11227 with a line of credit in an amount determined appropriate by the Secretary, subject to the limitations contained in subsection (b).

(b) LIMITATIONS ON AVAILABILITY OF AMOUNTS.—

(1) MAXIMUM AMOUNT.—The Secretary shall not provide in excess of $2,000,000 in lines of credit under this part to a single applicant.

(2) PERIOD OF AVAILABILITY.—A line of credit provided under this part shall remain available over a period of time established by the Secretary, but in no event shall any such

period of time be in excess of 3 years from the date on which such line of credit is made available.

(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), if a recipient of a line of credit under this part has made full and productive use of such line of credit, can demonstrate the need and demand for additional assistance, and can meet the requirements of section 11226(b)(2), the amount of such line of credit may be increased by not more that $1,500,000.

(c) AMOUNTS DRAWN FROM LINE OF CREDIT.—Amounts drawn from each line of credit under this part shall be used solely for the purposes described in section 11225 and shall only be drawn down as needed to provide loans, investments, or to defray administrative costs related to the establishment of a revolving loan fund.

(d) USE OF REVOLVING LOAN FUNDS.—Revolving loan funds established with lines of credit provided under this part may be used to provide technical assistance to private business enterprises and to provide financial assistance in the form of loans, loan guarantees, interest reduction assistance, equity shares, and other such forms of assistance to business enterprises in target areas and who are in compliance with section 11227(a)(4).

SEC. 11229. LIMITATIONS ON USE OF FUNDS.

(a) MATCHING REQUIREMENT.—Not to exceed 50 percent of the total amount to be invested by an entity under this part may be derived from funds made available from a line of credit under this part.

(b) TECHNICAL ASSISTANCE AND ADMINISTRATION.—Not to exceed 10 percent of the amounts available from a line of credit under this part shall be used for the provision of training or technical assistance and for the planning, development, and management of economic development projects. Community development corporations shall be encouraged by the Secretary to seek technical assistance from other community development corporations, with expertise in the planning, development and management of economic development projects. The Secretary shall assist in the identification and facilitation of such technical assistance.

(c) LOCAL AND PRIVATE SECTOR CONTRIBUTIONS.—To receive funds available under a line of credit provided under this part, an entity, using procedures established by the Secretary, shall demonstrate to the community development corporation that such entity agrees to provide local and private sector contributions in accordance with section 11226(b)(2)(D), will participate with such community development corporation in a loan, guarantee or investment program for a designated business enterprise, and that the total financial commitment to be provided by such entity is at least equal to the amount to be drawn from the line of credit.

(d) USE OF PROCEEDS FROM INVESTMENTS.—Proceeds derived from investments made using funds made available under this part may be used only for the purposes described in section 11225 and shall be reinvested in the community in which they were generated.

SEC. 11230. PROGRAM PRIORITY FOR SPECIAL EMPHASIS PROGRAMS.

(a) IN GENERAL.—The Secretary shall give priority in providing lines of credit under this part to community development corporations that propose to undertake economic development activities in

distressed communities that target women, Native Americans, at risk youth, farmworkers, population-losing communities, very low-income communities, single mothers, veterans, refugees or that expand employee ownership of private enterprises and small businesses, and to programs providing loans of not more than $35,000 to very small business enterprises.

(b) RESERVATION OF FUNDS.—Not less than 5 percent of the amounts made available under section 11247(a)(2)(A) may be reserved to carry out the activities described in subsection (a).

PART II—EMERGING COMMUNITY DEVELOPMENT CORPORATIONS

SEC. 11235. COMMUNITY DEVELOPMENT CORPORATION IMPROVEMENT GRANTS.

(a) PURPOSE.—It is the purpose of this section to provide assistance to community development corporations to upgrade the management and operating capacity of such corporations and to enhance the resources available to enable such corporations to increase their community economic development activities.

(b) SKILL ENHANCEMENT GRANTS.—

(1) IN GENERAL.—The Secretary shall award grants to community development corporations to enable such corporations to attain or enhance the business management and development skills of the individuals that manage such corporations to enable such corporations to seek the public and private resources necessary to develop community economic development projects.

(2) USE OF FUNDS.—A recipient of a grant under paragraph (1) may use amounts received under such grant—

(A) to acquire training and technical assistance from agencies or institutions that have extensive experience in the development and management of low-income community economic development projects; or

(B) to acquire such assistance from other highly successful community development corporations.

(c) OPERATING GRANTS.—

(1) IN GENERAL.—The Secretary shall award grants to community development corporations to enable such corporations to support an administrative capacity for the planning, development, and management of low-income community economic development projects.

(2) USE OF FUNDS.—A recipient of a grant under paragraph (1) may use amounts received under such grant—

(A) to conduct evaluations of the feasibility of potential low-income community economic development projects that address identified needs in the low-income community and that conform to those projects and activities permitted under part I;

(B) to develop a business plan related to such a potential project; or

(C) to mobilize resources to be contributed to a planned low-income community economic development project or strategy.

(d) APPLICATIONS.—A community development corporation that desires to receive a grant under this section shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(e) AMOUNT AVAILABLE FOR A COMMUNITY DEVELOPMENT CORPORATION.—Amounts provided under this section to a community development corporation shall not exceed $75,000 per year. Such corporations may apply for grants under this section for up to 3 consecutive years, except that such corporations shall be required to submit a new application for each grant for which such corporation desires to receive and compete on the basis of such applications in the selection process.

SEC. 11236. EMERGING COMMUNITY DEVELOPMENT CORPORATION REVOLVING LOAN FUNDS.

(a) AUTHORITY.—The Secretary is authorized to award grants to emerging community development corporations to enable such corporations to establish, maintain or expand revolving loan funds, to make or guarantee loans, or to make capital investments in new or expanding local businesses.

(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

(1) be a community development corporation;

(2) have completed not less than one nor more than two community economic development projects or related projects that improve or provide job and employment opportunities to low-income individuals;

(3) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a strategic investment plan that identifies and describes the economic characteristics of the target area to be served, the types of business to be assisted using amounts received under the grant and the impact of such assistance on low-income individuals; and

(4) have secured one or more commitments from local sources for contributions (either in cash or in kind, letters of credit, or letters of commitment) in an amount that is equal to at least 10 percent of the amounts requested in the application submitted under paragraph (2).

(c) USE OF THE REVOLVING LOAN FUND.—

(1) IN GENERAL.—A revolving loan fund established or maintained with amounts received under this section may be utilized to provide financial and technical assistance, loans, loan guarantees or investments to private business enterprises to—

(A) finance projects intended to provide business and employment opportunities for low-income individuals and to improve the quality of life in urban and rural areas; and

(B) build and expand the capacity of emerging community development corporations and serve the economic needs of local residents.

(2) TECHNICAL ASSISTANCE.—The Secretary shall encourage emerging community development corporations that receive

grants under this section to seek technical assistance from established community development corporations, with expertise in the planning, development and management of economic development projects and shall facilitate the receipt of such assistance.

(3) LIMITATION.—Not to exceed 10 percent of the amounts received under this section by a grantee shall be used for training, technical assistance and administrative purposes.

(d) USE OF PROCEEDS FROM INVESTMENTS.—Proceeds derived from investments made with amounts provided under this section may be utilized only for the purposes described in this subchapter and shall be reinvested in the community in which they were generated.

(e) AMOUNTS AVAILABLE.—Amounts provided under this section to a community development corporation shall not exceed $500,000 per year.

PART III—RESEARCH AND DEMONSTRATION

SEC. 11241. RESEARCH AND DEMONSTRATION.

(a) GRANTS.—The Secretary shall award grants to organizations to enable such organizations to undertake programs involving research, testing, studies or demonstrations related to community economic development.

(b) ELIGIBLE ORGANIZATIONS.—To be eligible to receive a grant under this section, an entity shall—

(1) be a community development corporation, university, fiscal intermediary or a nonprofit organization involved in community-based economic development activities; and

(2) prepare and submit to the Secretary an application at such time, in such manner and containing such information as the Secretary determines appropriate.

(c) USE OF FUNDS.—Amounts received under a grant awarded under this section shall be made available for studies, reports, tests or demonstration projects that—

(1) identify current problems facing both urban and rural low-income communities or specific population groups within low-income communities and population-losing communities;

(2) identify solutions to the problems facing both urban and rural low-income communities or specific population groups within low-income communities;

(3) examine or critique current strategies being implemented to address economic issues facing low-income communities; and

(4) relate to any other matters determined appropriate by the Secretary.

(d) MAXIMUM AMOUNT OF GRANT.—A grant awarded under this section shall not exceed $50,000.

PART IV—MISCELLANEOUS PROVISIONS

SEC. 11245. JOINT PROGRAMS.

The Secretary shall develop and promulgate, in consultation with the heads of other Federal agencies, regulations designed to permit, where appropriate, the operation of joint programs under which activities supported with assistance provided under this

chapter are coordinated with community development activities supported with assistance provided under other programs administered by the Secretary and those administered by the heads of such agencies.

SEC. 11246. REPORTS.

(a) COMMUNITY DEVELOPMENT CORPORATIONS.—Not later than 2 years after the date on which assistance is provided to a community development corporation under part I or II, every 2 years thereafter, the community development corporation shall prepare and submit to the Secretary a report under this section. Such report shall include—

(1) the amount of funds received by the community development corporation;

(2) a summary of the uses of such funds;

(3) the number of jobs created or retained by the corporation;

(4) the number and type of new businesses started, including micro-businesses;

(5) the number of jobs created or retained for individuals identified in section 11227(a)(4);

(6) in the case of funds made available under part I, the source and amount of matching funds;

(7) in the case of revolving loan funds made available under part II, the amount of funds leveraged; and

(8) related human services and facilities provided as result of assistance provided under this chapter.

(b) SECRETARY.—Not later than 3 years after the date on which assistance is first provided under part I or II, and annually thereafter, the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives a report containing a summary of the reports received by the Secretary under subsection (a) for the period in which the report of the Secretary is submitted.

SEC. 11247. DEFINITIONS.

As used in this chapter:

(1) COMMUNITY DEVELOPMENT CORPORATION.—The term "community development corporation" means a private, nonprofit corporation whose board of directors is comprised of business, civic and community leaders, and whose principal purpose includes the provision of low-income housing or community economic development projects that primarily benefit low-income individuals and communities.

(2) LOCAL AND PRIVATE SECTOR CONTRIBUTION.—The term "local and private sector contribution" means the funds available at the local level (by private financial institutions, State and local governments) or by any private philanthropic organization and private, nonprofit organizations that will be committed and used solely for the purpose of financing private business enterprises in conjunction with amounts provided under this chapter.

(3) POPULATION-LOSING COMMUNITY.—The term "population-losing community" means any county in which the net pop-

ulation loss is at least 7 percent from April 1, 1980 to April 1, 1990, as reported by the Bureau of the Census.

(4) PRIVATE BUSINESS ENTERPRISE.—The term "private business enterprise" means any business enterprise that is engaged in the manufacture of a product, provision of a service, construction or development of a facility, or that is involved in some other commercial, manufacturing or industrial activity, and that agrees to target job opportunities stemming from investments authorized under this chapter to certain individuals.

(5) TARGET AREA.—The term "target area" means any area defined in an application for assistance under this chapter that has a population whose income does not exceed the median for the area within which the target area is located.

(6) VERY LOW-INCOME COMMUNITY.—The term "very low-income community" means a community in which the median income of the residents of such community does not exceed 50 percent of the median income of the area.

SEC. 11248. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMUNITY ECONOMIC PARTNERSHIP INVESTMENT FUNDS AND EMERGING COMMUNITY DEVELOPMENT CORPORATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out parts I and II, $40,000,000 for fiscal year 1993, $100,000,000 for fiscal year 1994, and $125,000,000 for fiscal year 1995.

(2) EARMARKS.—Of the aggregate amount appropriated under paragraph (1) for each fiscal year—

(A) 60 percent shall be available to carry out part I; and

(B) 40 percent shall be available to carry out part II.

(3) AMOUNTS.—Amounts appropriated under paragraph (1) shall remain available for expenditure without fiscal year limitation.

(b) RESEARCH AND DEMONSTRATION.—There are authorized to be appropriated to carry out part III such sums as may be necessary for each of the fiscal years 1993 through 1995.

SEC. 11249. PROHIBITION.

None of the funds authorized under this chapter shall be used to finance the construction of housing.

SEC. 11250. EFFECTIVE DATE.

This chapter shall take effect as if included in the Omnibus Budget Reconciliation Act of 1990.

CHAPTER 4—MISCELLANEOUS PROGRAMS

SEC. 11261. ESTABLISHMENT OF ENTERPRISE CAPITAL ACCESS FUND.

(a) SHORT TITLE.—This section may be cited as the "Enterprise Capital Access Fund Demonstration Program".

(b) FINDINGS AND PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) the Nation's urban and rural communities face critical social and economic problems stemming from lack of economic opportunity among low-income persons and persons living in poverty;

(B) the numbers of low-income persons and persons living in poverty has grown significantly over the last decade;

(C) lack of access to credit and other forms of capital is a significant factor in the disinvestment and decline of low-income and minority neighborhoods;

(D) changes in the banking system and financial markets have made access to credit in low-income and distressed communities increasingly more difficult to obtain as decisionmaking on credit has been removed from local communities;

(E) the restoration and maintenance of viable local economies will require improved access to credit, as well as public and private investment in economic and community development activities, business development, and low-income housing;

(F) indigenous community-based financial institutions can play a significant role in identifying and responding to community needs;

(G) the Federal Government needs to develop new models and institutions for facilitating local revitalization efforts and improving access to credit; and

(H) nonprofit financial intermediaries have proven effective in meeting the credit and other capital needs in low-income and distressed communities.

(2) PURPOSE.—The purpose of this section is to establish a demonstration program to promote reinvestment in low-income and chronically distressed neighborhoods through community-based nonprofit financial institutions that work cooperatively with residents and State and local government.

(c) DEFINITIONS.—For the purpose of this section, the following definitions shall apply:

(1) ELIGIBLE INTERMEDIARY.—The term "eligible intermediary" means a nonprofit organization that—

(A) is organized under Federal, State or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or other person;

(C) complies with standards of financial accountability acceptable to the Secretary;

(D) controls, operates or is affiliated with an entity that provides credit or investment capital in a targeted geographic area;

(E) has as its primary mission the revitalization of low-income and chronically distressed neighborhoods or communities; and

(F) maintains, through significant representation on its governing board and otherwise, accountability to community residents.

(2) LOW-INCOME PERSONS.—The term "low-income persons" means persons whose incomes do not exceed 80 percent of the median for the area.

(3) SECRETARY.—The term "Secretary" means the Secretary of Housing and Urban Development.

(4) TARGETED GEOGRAPHIC AREA.—The term "targeted geographic area" means a geographically contiguous area of chronic economic distress as measured by unemployment, growth lag, the extent of poverty, per capita income, extent of blight and disinvestment, fiscal distress, or other indicators deemed appropriate by the Secretary, that has been identified by an eligible intermediary as an area to be served by it.

(d) AUTHORITY.—The Secretary shall carry out, in accordance with this section, a demonstration program to provide assistance in the form of capital and technical assistance grants to nonprofit financial intermediaries for the establishment, maintenance, and expansion of such institutions, to be utilized to finance business and employment opportunities, housing opportunities affordable to low-income persons, and neighborhood revitalization projects.

(e) APPLICATIONS.—The Secretary shall establish and implement a competitive process for the solicitation and consideration of applications from eligible intermediaries.

(f) SELECTION CRITERIA.—

(1) IN GENERAL.—Not later than 12 months after the date of enactment of this section, the Secretary shall select eligible intermediaries to participate in the demonstration program, based on—

(A) the capacity of the eligible intermediary to carry out the purposes of this title;

(B) the financial capacity of the eligible intermediary based on evaluations provided by a certified public accountant and criteria to be determined by the Secretary;

(C) the extent of need in the targeted geographic area identified by the eligible intermediary as the area it serves;

(D) the extent to which the lending services of the eligible intermediary are coordinated with other revitalization activities in the targeted geographic area;

(E) the previous experience and achievements of the eligible intermediary in the financing or development of low-income housing, in development of businesses and other employment opportunities, or in neighborhood revitalization activities;

(F) the extent to which the eligible intermediary has firm commitments from local sources to provide matching funds in an amount that is at least equal to the amount requested in the application;

(G) an appropriate geographic distribution of intermediaries among regions in the United States;

(H) the extent to which the eligible intermediary demonstrates a commitment to serve minority individuals and communities; and

(K) other criteria deemed appropriate by the Secretary.

(g) CAPITAL GRANTS.—

(1) IN GENERAL.—The Secretary shall make capital grants to eligible intermediaries.

(2) USE OF GRANTS.—Capital grants may be used by eligible intermediaries to increase the capital available for loans, loan guarantees, interest rate reduction activities, and other activities deemed appropriate by the Secretary that promote housing

affordable to low-income persons and economic and community development activities that benefit low-income persons.

(3) AMOUNT.—The maximum amount of Federal assistance an eligible intermediary can receive per fiscal year under this section is $1,000,000.

(h) TECHNICAL ASSISTANCE.—The Secretary is authorized to make grants to eligible intermediaries to provide technical assistance to borrowers.

(i) TRAINING PROGRAM.—The Secretary shall establish, or contract to establish, an ongoing training program to assist eligible intermediaries and their staffs in developing the capacity to carry out the purposes of this title.

(j) REPORT.—The Secretary shall annually prepare and submit to Congress a report containing a summary of the activities carried out under this section and the findings and conclusions drawn from such activities.

(k) DUTIES OF ELIGIBLE INTERMEDIARIES.—An eligible intermediary receiving assistance pursuant to this section shall—

(1) match any assistance awarded by the Secretary dollar-for-dollar with non-Federal sources of funds;

(2) ensure that not less than 70 percent of loans to individual borrowers are to persons whose incomes are at or below 80 percent of the area median income and are residents of the targeted geographic area served; and

(3) ensure that all loans made to nonprofit or for-profit organizations provide a direct benefit to persons who are residents of the targeted geographic area served.

(l) OFFICE OF COMMUNITY BANKING.—There is established within the Department of Housing and Urban Development an Office of Community Banking which is responsible for the implementation of this section.

(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $100,000,000 for fiscal year 1993 and $200,000,000 for fiscal year 1994. Any amounts appropriated pursuant to this paragraph shall remain available until expended.

SEC. 11262. HOPE FOR YOUTH: YOUTHBUILD.

(a) IN GENERAL.—Title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437aaa note et seq.) is amended by adding at the end the following new subtitle:

"Subtitle D—Establishment of Youthbuild

"SEC. 451. STATEMENT OF PURPOSE.

"It is the purpose of this subtitle—

"(1) to expand the supply of permanent affordable housing for homeless individuals and members of low- and very low-income families by harnessing the energies and talents of economically disadvantaged young adults;

"(2) to provide economically disadvantaged young adults with opportunities for meaningful work and service to their

communities in helping to meet the housing needs of homeless individuals and members of low- and very low-income families;

"(3) to enable economically disadvantaged young adults to obtain the education and employment skills necessary to achieve economic self-sufficiency; and

"(4) to foster the development of leadership skills and commitment to community development among young adults in low-income communities.

"SEC. 452. PROGRAM AUTHORITY.

"(a) IN GENERAL.—The Secretary is authorized to make—

"(1) planning grants to enable applicants to develop Youthbuild programs; and

"(2) implementation grants to enable applicants to carry out Youthbuild programs.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this subtitle, $40,000,000 for fiscal year 1993 and $80,000,000 for fiscal year 1994. Any amount appropriated pursuant to this subsection shall remain available until expended.

"SEC. 453. PLANNING GRANTS.

"(a) GRANTS.—The Secretary is authorized to make planning grants to applicants for the purpose of developing Youthbuild programs under this subtitle. The amount of a planning grant under this section may not exceed $150,000, except that the Secretary may for good cause approve a grant in a higher amount.

"(b) ELIGIBLE ACTIVITIES.—Planning grants may be used for activities to develop Youthbuild programs including—

"(1) studies of the feasibility of a Youthbuild program;

"(2) establishment of consortia between youth training and education programs and housing owners or developers, including any organizations specified in section 457(2), which will participate in the Youthbuild program;

"(3) identification and selection of a site for the Youthbuild program;

"(4) preliminary architectural and engineering work for the Youthbuild program;

"(5) identification and training of staff for the Youthbuild program;

"(6) planning for education, job training, and other services that will be provided as part of the Youthbuild program;

"(7) other planning, training, or technical assistance necessary in advance of commencing the Youthbuild program; and

"(8) preparation of an application for an implementation grant under this subtitle.

"(c) APPLICATION.—

"(1) FORM AND PROCEDURES.—An application for a planning grant shall be submitted by an applicant in such form and in accordance with such procedures as the Secretary shall establish.

"(2) MINIMUM REQUIREMENTS.—The Secretary shall require that an application contain at a minimum—

"(A) a request for a planning grant, specifying the activities proposed to be carried out, the schedule for complet-

ing the activities, the personnel necessary to complete the activities, and the amount of the grant requested;

"(B) a description of the applicant and a statement of its qualifications, including a description of the applicant's past experience with housing rehabilitation or construction and with youth and youth education and employment training programs, and its relationship with local unions and apprenticeship programs, and other community groups;

"(C) identification and description of potential sites for the program and the construction or rehabilitation activities that would be undertaken at such sites; potential methods for identifying and recruiting youth participants; potential educational and job training activities, work opportunities and other services for participants; and potential coordination with other Federal, State, and local housing and youth education and employment training activities including activities conducted by Indian tribes;

"(D) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located; and

"(E) a certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing.

"(d) SELECTION CRITERIA.—The Secretary shall, by regulation, establish selection criteria for a national competition for assistance under this section, which shall include—

"(1) the qualifications or potential capabilities of the applicant;

"(2) the potential of the applicant for developing a successful Youthbuild program;

"(3) the need for the prospective program, as determined by the degree of economic distress—

"(A) of the community from which participants would be recruited (such as poverty, youth unemployment, and number of individuals who have dropped out of high school); and

"(B) of the community in which the housing proposed to be constructed or rehabilitated would be located (such as incidence of homelessness, shortage of affordable housing, and poverty); and

"(4) such other factors that the Secretary shall require that (in the determination of the Secretary) are appropriate for purposes of carrying out the program established by this subtitle in an effective and efficient manner.

"SEC. 454. IMPLEMENTATION GRANTS.

"(a) GRANTS.—The Secretary is authorized to make implementation grants to applicants for the purpose of carrying out Youthbuild programs approved under this subtitle.

"(b) ELIGIBLE ACTIVITIES.—Implementation grants may be used to carry out Youthbuild programs, including—

"(1) architectural and engineering work;

"(2) acquisition, rehabilitation, acquisition and rehabilitation, or construction of housing and related facilities to be used for the purposes of providing homeownership under subtitle B and subtitle C of this title; residential housing for homeless individuals, and low- and very low-income families; or transitional housing for persons who are homeless, have disabilities, are ill, are deinstitutionalized, or have other special needs;

"(3) administrative costs of the applicant, which may not exceed 15 percent of the amount of assistance provided under this section, or such higher percentage as the Secretary determines is necessary to support capacity development by a private nonprofit organization;

"(4) education and job training services and activities including—

"(A) work experience and skills training, coordinated, to the maximum extent feasible, with preapprenticeship and apprenticeship programs, in the construction and rehabilitation activities described in subsection (b)(2);

"(B) services and activities designed to meet the educational needs of participants, including—

"(i) basic skills instruction and remedial education;

"(ii) bilingual education for individuals with limited-English proficiency;

"(iii) secondary education services and activities designed to lead to the attainment of a high school diploma or its equivalent; and

"(iv) counseling and assistance in attaining post-secondary education and required financial aid;

"(C) counseling services and related activities;

"(D) activities designed to develop employment and leadership skills, including support for youth councils; and

"(E) support services and need-based stipends necessary to enable individuals to participate in the program and, for a period not to exceed 12 months after completion of training, to assist participants through support services in retaining employment;

"(5) wage stipends and benefits provided to participants;

"(6) funding of operating expenses and replacement reserves of the property covered by the Youthbuild program;

"(7) legal fees; and

"(8) defraying costs for the ongoing training and technical assistance needs of the recipient that are related to developing and carrying out the Youthbuild program.

"(c) APPLICATION.—

"(1) FORM AND PROCEDURE.—An application for an implementation grant shall be submitted by an applicant in such

form and in accordance with such procedures as the Secretary shall establish.

"(2) MINIMUM REQUIREMENTS.—The Secretary shall require that an application contain at a minimum—

"(A) a request for an implementation grant, specifying the amount of the grant requested and its proposed uses;

"(B) a description of the applicant and a statement of its qualifications, including a description of the applicant's past experience with housing rehabilitation or construction and with youth and youth education and employment training programs, and its relationship with local unions and apprenticeship programs, and other community groups;

"(C) a description of the proposed site for the program;

"(D) a description of the educational and job training activities, work opportunities, and other services that will be provided to participants;

"(E) a description of the proposed construction or rehabilitation activities to be undertaken and the anticipated schedule for carrying out such activities;

"(F) a description of the manner in which eligible youths will be recruited and selected, including a description of arrangements which will be made with community-based organizations, State and local educational agencies, including agencies of Indian tribes, public assistance agencies, the courts of jurisdiction for status and youth offenders, shelters for homeless individuals and other agencies that serve homeless youth, foster care agencies, and other appropriate public and private agencies;

"(G) a description of the special outreach efforts that will be undertaken to recruit eligible young women (including young women with dependent children);

"(H) a description of how the proposed program will be coordinated with other Federal, State, and local activities and activities conducted by Indian tribes, including vocational, adult and bilingual education programs, job training provided with funds available under the Job Training Partnership Act and the Family Support Act of 1988, and housing and community development programs, including programs that receive assistance under section 106 of the Housing and Community Development Act of 1974;

"(I) assurances that there will be a sufficient number of adequately trained supervisory personnel in the program who have attained the level of journeyman or its equivalent;

"(J) a description of the applicant's relationship with local building trade unions regarding their involvement in training, and the relationship of the Youthbuild program with established apprenticeship programs;

"(K) a description of activities that will be undertaken to develop the leadership skills of participants;

"(L) a detailed budget and a description of the system of fiscal controls and auditing and accountability procedures that will be used to ensure fiscal soundness;

"(M) a description of the commitments for any additional resources to be made available to the program from the applicant, from recipients of other Federal, State or local housing and community development assistance who will sponsor any part of the construction, rehabilitation, operation and maintenance, or other housing and community development activities undertaken as part of the program, or from other Federal, State or local activities and activities conducted by Indian tribes, including, but not limited to, vocational, adult and bilingual education programs, and job training provided with funds available under the Job Training Partnership Act and the Family Support Act of 1988;

"(N) identification and description of the financing proposed for any—

"(i) rehabilitation;

"(ii) acquisition of the property; or

"(iii) construction;

"(O) identification and description of the entity that will operate and manage the property;

"(P) a certification by the public official responsible for submitting the comprehensive housing affordability strategy under section 105 of the Cranston-Gonzalez National Affordable Housing Act that the proposed activities are consistent with the approved housing strategy of the State or unit of general local government within which the project is located; and

"(Q) a certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing.

"(d) SELECTION CRITERIA.—The Secretary shall establish selection criteria for assistance under this section, which shall include—

"(1) the qualifications or potential capabilities of the applicant;

"(2) the feasibility of the Youthbuild program;

"(3) the potential for developing a successful Youthbuild program;

"(4) the need for the prospective project, as determined by the degree of economic distress of the community from which participants would be recruited (such as poverty, youth unemployment, number of individuals who have dropped out of high school) and of the community in which the housing proposed to be constructed or rehabilitated would be located (such as incidence of homelessness, shortage of affordable housing, poverty);

"(5) the apparent commitment of the applicant to leadership development, education, and training of participants;

"(6) the inclusion of previously homeless tenants in the housing provided;

"(7) the commitment of other resources to the program by the applicant and by recipients of other Federal, State or local housing and community development assistance who will sponsor any part of the construction, rehabilitation, operation and

maintenance, or other housing and community development activities undertaken as part of the program, or by other Federal, State or local activities and activities conducted by Indian tribes, including, but not limited to, vocational, adult and bilingual education programs, and job training provided with funds available under the Job Training Partnership Act and the Family Support Act of 1988; and

"(8) such other factors as the Secretary determines to be appropriate for purposes of carrying out the program established by this subtitle in an effective and efficient manner.

"(e) PRIORITY FOR APPLICANTS WHO OBTAIN HOUSING MONEY FROM OTHER SOURCES.—The Secretary shall give priority in the award of grants under this section to applicants to the extent that they propose to finance activities described in paragraphs (1), (2), and (6) of subsection (b) from funds provided from Federal, State, local, or private sources other than assistance under this subtitle.

"(f) APPROVAL.—The Secretary shall notify each applicant, not later than 4 months after the date of the submission of the application, whether the application is approved or not approved.

"(g) COMBINED PLANNING AND IMPLEMENTATION GRANT APPLICATION PROCEDURE.—The Secretary shall develop a procedure whereby an applicant may apply at the same time and in a single application for a planning grant and an implementation grant, with receipt of the implementation grant conditioned on successful completion of the activities funded by the planning grant.

"SEC. 455. YOUTHBUILD PROGRAM REQUIREMENTS.

"(a) RESIDENTIAL RENTAL HOUSING.—Each residential rental housing project receiving assistance under this subtitle shall meet the following requirements:

"(1) OCCUPANCY BY LOW- AND VERY LOW-INCOME FAMILIES.—In the project—

"(A) at least 90 percent of the units shall be occupied, or available for occupancy, by individuals and families with incomes less than 60 percent of the area median income, adjusted for family size; and

"(B) the remaining units shall be occupied, or available for occupancy, by low-income families;

"(2) TENANT PROTECTIONS.—

"(A) LEASE.—The lease between a tenant and an owner of residential rental housing assisted under this subtitle shall be for not less than 1 year, unless by mutual agreement between the tenant and the owner, and shall contain such terms and conditions as the Secretary shall determine to be appropriate.

"(B) TERMINATION OF TENANCY.—An owner shall not terminate the tenancy or refuse to renew the lease of a tenant of residential rental housing assisted under this title except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

"(C) MAINTENANCE AND REPLACEMENT.—The owner of residential rental housing assisted under this subtitle shall maintain the premises in compliance with all applicable housing quality standards and local code requirements.

"(D) TENANT SELECTION.—The owner of residential rental housing assisted under this subtitle shall adopt written tenant selection policies and criteria that—

"(i) are consistent with the purpose of providing housing for very low-income and low-income families and individuals;

"(ii) are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;

"(iii) give reasonable consideration to the housing needs of families that would have a preference under section 6(c)(4)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(A)); and

"(iv) provide for—

"(I) the selection of tenants from a waiting list in the chronological order of their application, to the extent practicable; and

"(II) the prompt notification in writing of any rejected applicant of the grounds for any rejection.

"(3) LIMITATION ON RENTAL PAYMENTS.—Tenants in each project shall not be required to pay rent in excess of that in accordance with section 3(a) of the Housing Act of 1937.

"(4) TENANT PARTICIPATION PLAN.—For each project owned by a nonprofit organization, the organization shall provide a plan for and follow a program of tenant participation in management decisions.

"(5) PROHIBITION AGAINST DISCRIMINATION.—A unit in a project assisted under this subtitle may not be refused for leasing to a family holding tenant-based assistance under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as a holder of such assistance.

"(b) TRANSITIONAL HOUSING.—Each transitional housing project receiving assistance under this subtitle shall adhere to the requirements regarding service delivery, housing standards, and rent limitations imposed on comparable housing receiving assistance under title IV of the Stewart B. McKinney Homeless Assistance Act.

"(c) LIMITATIONS ON PROFITS FOR RENTAL AND TRANSITIONAL HOUSING.—

"(1) MONTHLY RENTAL LIMITATION.—Aggregate monthly rental for each eligible project may not exceed the operating costs of the project (including debt service, management, adequate reserves, and other operating costs) plus a 6 percent return on the equity investment, if any, of the project owner.

"(2) PROFIT LIMITATIONS ON PARTNERS.—A nonprofit organization that receives assistance under this subtitle for a project shall agree to use any profit received from the operation, sale, or other disposition of the project for the purpose of providing housing for low- and moderate-income families. Profit-motivated partners in a nonprofit partnership may receive—

"(A) not more than a 6 percent return on their equity investment from project operations; and

"(B) upon disposition of the project, not more than an amount equal to their initial equity investment plus a return on that investment equal to the increase in the Consumer Price Index for the geographic location of the project since the time of the initial investment of such partner in the project.

"(d) HOMEOWNERSHIP.—Each homeownership project that receives assistance under this subtitle shall comply with the requirements of either subtitle B or subtitle C of this title.

"(e) RESTRICTIONS ON CONVEYANCE.—The ownership interest in a project that receives assistance under this subtitle may not be conveyed unless the instrument of conveyance requires a subsequent owner to comply with the same restrictions imposed upon the original owner.

"(f) CONVERSION OF TRANSITIONAL HOUSING.—The Secretary may waive the requirements of subsection (b) to permit the conversion of a transitional housing project to a permanent housing project only if such housing would meet the requirements for residential rental housing specified in this section.

"(g) PERIOD OF RESTRICTIONS.—A project that receives assistance under this subtitle shall comply with the requirements of this section for the remaining useful life of the property.

"SEC. 456. ADDITIONAL PROGRAM REQUIREMENTS.

"(a) ELIGIBLE PARTICIPANTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an individual shall be eligible to participate in a Youthbuild program receiving assistance under this subtitle if such individual is—

"(A) 16 to 24 years of age, inclusive;

"(B) a very low-income individual or a member of a very low-income family; and

"(C) an individual who has dropped out of high school.

"(2) EXCEPTIONS.—Not more than 25 percent of the participants in a Youthbuild program receiving assistance under this subtitle may be individuals who do not meet the requirement of paragraph (1)(B) or (1)(C), but have educational needs despite the attainment of a high school diploma or its equivalent.

"(3) PARTICIPATION LIMITATION.—Any eligible individual selected for full-time participation in a Youthbuild program may be offered full-time participation for a period of not less than 6 months and not more than 24 months.

"(b) MINIMUM TIME DEVOTED TO EDUCATIONAL SERVICES AND ACTIVITIES.—A Youthbuild program receiving assistance under this subtitle must be structured so that 50 percent of the time spent by participants in the program is devoted to educational services and activities, such as those specified in section 454(b)(4)(B) through (F) of this subtitle.

"(c) AUTHORITY RESTRICTION.—No provision of this subtitle may be construed to authorize any agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel

of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system.

"(d) STATE AND LOCAL STANDARDS.—All educational programs and activities supported with funds provided under this subtitle shall be consistent with applicable State and local educational standards. Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in such programs shall be consistent with applicable State and local educational standards.

"(e) WAGES, LABOR STANDARDS, AND NONDISCRIMINATION.—To the extent consistent with the provisions of this subtitle, sections 142, 143 and 167 of the Job Training Partnership Act, relating to wages and benefits, labor standards, and nondiscrimination, shall apply to the programs conducted under this subtitle as if such programs were conducted under the Job Training Partnership Act. Nothing in this section shall be construed to prevent recipients from using funds from other sources to pay reasonable wages and benefits at a higher level if appropriate.

"SEC. 457. DEFINITIONS.

"As used in this subtitle:

"(1) ADJUSTED INCOME.—The term 'adjusted income' has the meaning given the term in section 3(b) of the United States Housing Act of 1937.

"(2) APPLICANT.—The term 'applicant' means a public or private nonprofit agency, including—

"(A) a community-based organization;

"(B) an administrative entity designated under section 103(b)(1)(B) of the Job Training Partnership Act;

"(C) a community action agency;

"(D) a State and local housing development agency;

"(E) a community development corporation;

"(F) a State and local youth service and conservation corps; and

"(G) any other entity eligible to provide education and employment training under other Federal employment training programs.

"(3) COMMUNITY-BASED ORGANIZATION.—The term 'community-based organization' means a private nonprofit organization that—

"(A) maintains, through significant representation on the organization's governing board or otherwise, accountability to low-income community residents and, to the extent practicable, low-income beneficiaries of programs receiving assistance under this subtitle; and

"(B) has a history of serving the local community or communities where a program receiving assistance under this subtitle is located.

"(4) HOMELESS INDIVIDUAL.—The term 'homeless individual' has the same meaning given the term in section 103 of the Stewart B. McKinney Homeless Assistance Act.

"(5) HOUSING DEVELOPMENT AGENCY.—The term 'housing development agency' means any agency of a State or local government, or any private nonprofit organization that is engaged in providing housing for homeless or low-income families.

"(6) INCOME.—The term 'income' has the meaning given the term in section 3(b) of the United States Housing Act of 1937.

"(7) INDIAN TRIBE.—The term 'Indian tribe' has the same meaning given such term in section 102(a)(17) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(17)).

"(8) INDIVIDUAL WHO HAS DROPPED OUT OF HIGH SCHOOL.—The term 'individual who has dropped out of high school' means an individual who is neither attending any school nor subject to a compulsory attendance law and who has not received a secondary school diploma or a certificate of equivalency for such diploma.

"(9) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given the term in section 1201(a) of the Higher Education Act of 1965.

"(10) LIMITED-ENGLISH PROFICIENCY.—The term 'limited-English proficiency' has the meaning given the term in section 7003 of the Bilingual Education Act.

"(11) LOW-INCOME FAMILY.—The term 'low-income family' has the meaning given the term 'lower income families' in section 3(b) of the United States Housing Act of 1937.

"(12) OFFENDER.—The term 'offender' means any adult or juvenile with a record of arrest or conviction for a criminal offense.

"(13) QUALIFIED NONPROFIT AGENCY.—The term 'qualified public or private nonprofit agency' means any nonprofit agency that has significant prior experience in the operation of projects similar to the Youthbuild program authorized under this subtitle and that has the capacity to provide effective technical assistance.

"(14) RELATED FACILITIES.—The term 'related facilities' includes cafeterias or dining halls, community rooms or buildings, appropriate recreation facilities, and other essential service facilities;

"(15) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

"(16) STATE.—The term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territories of the Pacific Islands, or any other territory or possession of the United States.

"(17) TRANSITIONAL HOUSING.—The term 'transitional housing' means a project that has as its purpose facilitating the movement of homeless individuals and families to independent living within a reasonable amount of time. Transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental or physical disabilities and homeless families with children.

"(18) VERY LOW-INCOME FAMILY.—The term 'very low-income family' has the meaning given the term in section 3(b) of the United States Housing Act of 1937.

"(19) YOUTHBUILD PROGRAM.—The term 'Youthbuild program' means any program that receives assistance under this subtitle and provides disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

"SEC. 458. MANAGEMENT AND TECHNICAL ASSISTANCE.

"(a) SECRETARY ASSISTANCE.—The Secretary may enter into contracts with a qualified public or private nonprofit agency to provide assistance to the Secretary in the management, supervision, and coordination of Youthbuild programs receiving assistance under this subtitle.

"(b) SPONSOR ASSISTANCE.—The Secretary shall enter into contracts with a qualified public or private nonprofit agency to provide appropriate training, information, and technical assistance to sponsors of programs assisted under this subtitle.

"(c) APPLICATION PREPARATION.—Technical assistance may also be provided in the development of program proposals and the preparation of applications for assistance under this subtitle to eligible entities which intend or desire to submit such applications. Community-based organizations shall be given first priority in the provision of such assistance.

"(d) RESERVATION OF FUNDS.—The Secretary shall reserve 5 percent of the amounts available for this subtitle in each fiscal year to carry out subsections (b) and (c) of this section.

"SEC. 459. CONTRACTS.

"Each Youthbuild program shall carry out the services and activities under this subtitle directly or through arrangements or under contracts with administrative entities designated under section 103(b)(1)(B) of the Job Training Partnership Act, with State and local educational agencies, institutions of higher education, State and local housing development agencies, or with other public agencies, including agencies of Indian tribes, and private organizations.

"SEC. 460. REGULATIONS.

"The Secretary shall issue any regulations necessary to carry out this subtitle.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall only take effect if the Housing and Community Development Act of 1992 is not enacted by December 1, 1992.

SEC. 11263. ACCESS TO JOBS/REVERSE COMMUTING DEMONSTRATION PROGRAM.

(a) PURPOSE.—It is the purpose of this section to—

(1) improve employment rates and earnings in inner-city areas by improving access to job sites for inner-city residents;

(2) improve the viability of businesses in enterprise zones as a result of the increased incomes and purchasing power of zone residents; and

(3) test differing approaches to achieving these goals and determine their effects.

(b) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—The Secretary of Labor, in consultation with the Secretary of Transportation, shall establish a Reverse Commuting Demonstration Program to test the effects of assisting residents of poor inner-city areas to commute to job sites in other areas of the city or surrounding suburbs.

(2) USE OF NON SET-ASIDE FUNDS.—Any applicant eligible for block grant funding under section 11105 of this Act that submits an application that meets the criteria in subsection (c) shall be approved by the Secretary of Labor, in consultation with the Secretary of Transportation, to utilize funds it receives under this title to carry out a program established under this section.

(3) USE OF SET-ASIDE FUNDS.—The funds set-aside under section 11102(d) for the program under this section shall be used by the Secretary of Labor, in consultation with the Secretary of Transportation, to fund not more than six demonstration projects utilizing the program models described in subsection (d). Projects shall be selected on a competitive basis from applications that meet the requirements of subsection (c) that are submitted by applicants eligible for block grant funding under section 11105 of this Act.

(c) APPLICATION AND APPROVAL CRITERIA.—An application under this section shall provide information specified by the Secretary of Labor, in consultation with the Secretary of Transportation, that is sufficient to satisfy the Secretary that—

(1) the geographic area whose residents would be served by the program established by the applicant under this section is a low-income area that consists in whole or substantial part of an urban enterprise zone;

(2) one of the three program models described in subsection (d) will be used by the applicant;

(3) the data collection procedures that will be established by the applicant will be sufficient to enable the Secretary of Labor, in consultation with the Secretary of Transportation, to conduct an evaluation in accordance with subsection (e); and

(4) the applicant has the capability to perform adequately with respect to the program established and to meet such other criteria as the Secretary of Labor may prescribe.

(d) PROGRAM MODELS.—Applications approved under this section shall utilize one of the following program models:

(1) ADDING TRANSPORTATION SERVICES TO EXISTING JOB TRAINING AND PLACEMENT PROGRAMS.—Under this model an applicant shall supplement existing training and placement programs through the establishment of new transportation services that are designed to—

(A) transport inner-city residents to job locations (such as van service between the zones and business parks or major employers, with the service being provided by a public agency, a private vendor, or a neighborhood organization);

(B) provide transportation counseling and assistance (such as the creation of car pools and provision of education on public transit routes); or

(C) provide a direct subsidy of public transit fares or private automobile expenses.

(2) IMPROVING PUBLIC TRANSIT SYSTEMS TO FACILITATE ACCESS TO JOBS/REVERSE COMMUTING.—Under this model an applicant may—

(A) work with the relevant transit operator or agency to modify public transit routes and schedules to increase the accessibility of residents of inner-city areas to job locations (such as through the provision of express bus service to business parks at times coinciding with labor shifts or the provision of new connecting services to fill gaps that impede commuting from inner-city areas to jobs sites); or

(B) reimburse public transit operators for the costs of providing reduced fare programs to increase the access of inner city residents to employment opportunities.

An applicant under subparagraph (A) may request suburban employers to contribute to the costs of implementing such transit services.

(3) ESTABLISHING REGIONAL COALITIONS TO IMPROVE INNER-CITY ACCESS TO JOBS.—Under this model an applicant shall establish a regional coalition, which may include neighborhood organizations, employers and employers associations, transportation providers, and similar entities, to implement comprehensive strategies to improve the access of residents of inner-cities to jobs through modifications in job training and placement services, support services such as child care, and transportation services. An applicant under this model shall attempt to link job training program participants with job opportunities throughout as much of the metropolitan area as practicable, and transportation barriers between inner-city areas and job locations shall be identified and transportation services implemented to address these problems.

(e) EVALUATION.—The Secretary of Labor, in consultation with the Secretary of Transportation, shall conduct a thorough evaluation of the program established under this section. Such evaluation shall include an assessment of—

(1) with respect to applicants adding transportation services to job training programs, the effect of the addition of such transportation services on employment rates, job retention, and earnings among residents of the demonstration project areas;

(2) with respect to applicants improving public transit systems, the effect of the improvements, on employment rates, job retention, and earnings;

(3) with respect to applicants establishing regional coalitions and implementing comprehensive strategies, the effects of such strategies on employment rates, job retention, and earnings; and

(4) the manner in which the adoption of such comprehensive strategies affect employment and earnings in urban enterprise zones, compared to other urban enterprise zones not initi-

ating programs to improve inner-city access to suburban job locations.

(f) OTHER FUNDING SOURCES.—Nothing in this section shall be construed to prevent an approved applicant from raising funds for any program established under the application from other sources to augment the funds available under this Act.

(g) DEFINITION.—As used in this section, the term "urban enterprise zone" means an area designated under section 1391 of the Internal Revenue Code of 1986.

SEC. 11264. STUDY OF INSURANCE AVAILABILITY IN CENTRAL CITIES AND DISTRESSED URBAN AREAS.

(a) IN GENERAL.—Not later than 24 months after the date of enactment of this Act, the Comptroller General shall prepare and submit to Congress a report assessing the market availability of insurance (including insurance against crime, civil disorders and related perils) for businesses and residences located in central cities and distressed urban areas and the impact of the availability of such insurance on the economic development or redevelopment of such areas.

(b) DETAIL OF CONTENTS.—The report required under subsection (c) shall consider—

(1) whether insurance (including insurance against crime, civil disorders, and related perils) is available at affordable rates in central cities and distressed urban areas either through the private insurance market or through a suitable program adopted under Federal or State law;

(2) whether reinsurance (including reinsurance against crime, civil disorders, and related perils) is available at affordable rates in central cities and other distressed urban areas either through the private reinsurance market or through a suitable program adopted under State law;

(3) the factors most likely to explain any deficiencies in the availability of such insurance or reinsurance;

(4) whether any deficiencies in the availability of such insurance or reinsurance act as a deterrent or barrier to the economic development or redevelopment of central cities and distressed urban areas;

(5) whether the Federal Crime Insurance Program operated pursuant to part C of title XII of the National Housing Act (12 U.S.C. 1749bbb et seq.) adequately promotes the availability of insurance in central cities and distressed urban areas and whether the program should be modified to more effectively advance that goal;

(6) whether those State Fair Access to Insurance (FAIR) Plans that were established pursuant to section 1211 of title XII of the National Housing Act or other programs adopted by State governments effectively promote the availability of insurance in central cities and distressed urban areas;

(7) whether reenactment of a Federal Riot Reinsurance Program to promote the availability of insurance (including insurance against crime, civil disorders, and related perils) would effectively promote the availability of insurance in central cities and distressed urban areas;

(8) whether other action by the Federal Government would be advisable to promote the availability of insurance (including insurance against crime, civil disorders, and related perils) in central cities and distressed urban areas in order to enhance the prospects for the economic development or redevelopment of such areas; and

(9) such other issues related to the availability of insurance in central cities and other distressed urban areas and the relationship of the availability of such insurance to the economic development or redevelopment of such areas as the Comptroller General considers appropriate.

(c) DEFINITIONS.—As used in this section,

(1) The term "affordable rates" shall have the meaning determined by the Comptroller General taking into consideration factors such as the nature and degree of risks involved, the protective devices employed, the extent of anticipated losses, the prevailing rates for similar coverages in adjacent or comparable areas, the economic importance of the various individual coverages, the type of property involved, and the relative abilities of the particular classes and types of insureds to pay the costs of coverages.

(2) The term "central city" means any political subdivision designated as a central city from time to time by the Office of Management and Budget.

(3) The term "distressed urban area" means an urban enterprise zone designated pursuant to section 1391 of the Internal Revenue Code of 1986 or any other urban area that has a high level of poverty, unemployment, or minority population share, as determined by the Comptroller General.

(d) REFERRAL.—The report required under subsection (a) shall, upon transmission to Congress, be referred in the Senate to the Committee on Banking, Housing, and Urban Affairs, and the Committee on Finance, and in the House of Representatives to the Committee on Banking, Finance, and Urban Affairs.

TITLE XII—HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT

SEC. 12001. SHORT TITLE.

This title may be cited as the "High Seas Driftnet Fisheries Enforcement Act".

SEC. 12002. FINDINGS AND POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) Large-scale driftnet fishing on the high seas is highly destructive to the living marine resources and ocean ecosystems of the world's oceans, including anadromous fish and other living marine resources of the United States.

(2) The cumulative effects of large-scale driftnet fishing pose a significant threat to the marine ecosystem, and slow-reproducing species like marine mammals, sharks, and seabirds may require many years to recover.

(3) Members of the international community have reviewed the best available scientific data on the impacts of large-scale pelagic driftnet fishing, and have failed to conclude that this practice has no significant adverse impacts which threaten the conservation and sustainable management of living marine resources.

(4) The United Nations, via General Assembly Resolutions numbered 44 225, 45 197, and most recently 46 215 (adopted on December 20, 1991), has called for a worldwide moratorium on all high seas driftnet fishing by December 31, 1992, in all the world's oceans, including enclosed seas and semi-enclosed seas.

(5) The United Nations has commended the unilateral, regional, and international efforts undertaken by members of the international community and international organizations to implement and support the objectives of the General Assembly resolutions.

(6) Operative paragraph (4) of United Nations General Assembly Resolution numbered 46 215 specifically "encourages all members of the international community to take measures individually and collectively to prevent large-scale pelagic driftnet fishing operations on the high seas of the world's oceans and seas".

(7) The United States, in section 307(1)(M) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857(1)(M)), has specifically prohibited the practice of large-scale driftnet fishing by United States nationals and vessels both within the exclusive economic zone of the United States and beyond the exclusive economic zone of any nation.

(8) The Senate, through Senate Resolution 396 of the 100th Congress (approved on March 18, 1988), has called for a moratorium on fishing in the Central Bering Sea and the United States has taken concrete steps to implement such moratorium through international negotiations.

(9) Despite the continued evidence of a decline in the fishery resources of the Bering Sea and the multiyear cooperative negotiations undertaken by the United States, the Russian Federation, Japan, and other concerned fishing nations, some nations refuse to agree to measures to reduce or eliminate unregulated fishing practices in the waters of the Bering Sea beyond the exclusive economic zones of the United States and the Russian Federation.

(10) In order to ensure that the global moratorium on large-scale driftnet fishing called for in United Nations General Assembly Resolution numbered 46 215 takes effect by December 31, 1992, and that unregulated fishing practices in the waters of the Central Bering Sea are reduced or eliminated, the United States should take the actions described in this Act and encourage other nations to take similar action.

(b) POLICY.—It is the stated policy of the United States to—

(1) implement United Nations General Assembly Resolution numbered 46 215, approved unanimously on December 20, 1991, which calls for an immediate cessation to further expansion of large-scale driftnet fishing, a 50 percent reduction in existing large-scale driftnet fishing effort by June 30, 1992, and a global

moratorium on the use of large-scale driftnets beyond the exclusive economic zone of any nation by December 31, 1992;

(2) bring about a moratorium on fishing in the Central Bering Sea, or an international conservation and management agreement to which the United States and the Russian Federation are parties that regulates fishing in the Central Bering Sea; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

Subtitle A—High Seas Large-Scale Driftnet Fishing

SEC. 12021. DENIAL OF PORT PRIVILEGES AND SANCTIONS FOR HIGH SEAS LARGE-SCALE DRIFTNET FISHING.

(a) DENIAL OF PORT PRIVILEGES.—

(1) PUBLICATION OF LIST.—Not later than 30 days after the date of enactment of this Act and periodically thereafter, the Secretary of Commerce, in consultation with the Secretary of State, shall publish a list of nations whose nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation.

(2) DENIAL OF PORT PRIVILEGES.—The Secretary of the Treasury shall, in accordance with recognized principles of international law—

(A) withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for any large-scale driftnet fishing vessel that is documented under the laws of the United States or of a nation included on a list published under paragraph (1); and

(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States.

(3) NOTIFICATION OF NATION.—Before the publication of a list of nations under paragraph (1), the Secretary of State shall notify each nation included on that list regarding—

(A) the effect of that publication on port privileges of vessels of that nation under paragraph (1); and

(B) any sanctions or requirements, under this Act or any other law, that may be imposed on that nation if nationals or vessels of that nation continue to conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation after December 31, 1992.

(b) SANCTIONS.—

(1) IDENTIFICATIONS.—

(A) INITIAL IDENTIFICATIONS.—Not later than January 10, 1993, the Secretary of Commerce shall—

(i) identify each nation whose nationals or vessels are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(ii) notify the President and that nation of the identification under clause (i).

(B) ADDITIONAL IDENTIFICATIONS.—At any time after January 10, 1993, whenever the Secretary of Commerce has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation, the Secretary of Commerce shall—

(i) identify that nation; and

(ii) notify the President and that nation of the identification under clause (i).

(2) CONSULTATIONS.—Not later than 30 days after a nation is identified under paragraph (1)(B), the President shall enter into consultations with the government of that nation for the purpose of obtaining an agreement that will effect the immediate termination of large-scale driftnet fishing by the nationals or vessels of that nation beyond the exclusive economic zone of any nation.

(3) PROHIBITION ON IMPORTS OF FISH AND FISH PRODUCTS AND SPORT FISHING EQUIPMENT.—

(A) PROHIBITION.—The President—

(i) upon receipt of notification of the identification of a nation under paragraph (1)(A); or

(ii) if the consultations with the government of a nation under paragraph (2) are not satisfactorily concluded within 90 days, shall direct the Secretary of the Treasury to prohibit the importation into the United States of fish and fish products and sport fishing equipment (as that term is defined in section 4162 of the Internal Revenue Code of 1986 (26 U.S.C. 4162)) from that nation.

(B) IMPLEMENTATION OF PROHIBITION.—With respect to an import prohibition directed under subparagraph (A), the Secretary of the Treasury shall implement such prohibition not later than the date that is 45 days after the date on which the Secretary has received the direction from the President.

(C) PUBLIC NOTICE OF PROHIBITION.—Before the effective date of any import prohibition under this paragraph, the Secretary of the Treasury shall provide public notice of the impending prohibition.

(4) ADDITIONAL ECONOMIC SANCTIONS.—

(A) DETERMINATION OF EFFECTIVENESS OF SANCTIONS.—Not later than 6 months after the date the Secretary of Commerce identifies a nation under paragraph (1), the Secretary shall determine whether—

(i) any prohibition established under paragraph (3) is insufficient to cause that nation to terminate large-scale driftnet fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation; or

(ii) that nation has retaliated against the United States as a result of that prohibition.

(B) CERTIFICATION.—The Secretary of Commerce shall certify to the President each affirmative determination under subparagraph (A) with respect to a nation.

(C) EFFECT OF CERTIFICATION.—Certification by the Secretary of Commerce under subparagraph (B) is deemed to be a certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)), as amended by this Act.

SEC. 12022. DURATION OF DENIAL OF PORT PRIVILEGES AND SANCTIONS.

Any denial of port privileges or sanction under section 12021 with respect to a nation shall remain in effect until such time as the Secretary of Commerce certifies to the President and the Congress that such nation has terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

SEC. 12023. REQUIREMENTS UNDER MARINE MAMMAL PROTECTION ACT OF 1972.

Section 101(a)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2)) is amended—

(1) in subparagraph (E)(i) by striking "July 1, 1992" and inserting in lieu thereof "January 1, 1993"; and

(2) in the last sentence by inserting ", except that, until January 1, 1994, the term 'driftnet' does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed 5 kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community" immediately after "(16 U.S.C. 1822 note)".

SEC. 12024. DEFINITIONS

In this subtitle, the following definitions apply:

(1) FISH AND FISH PRODUCTS.—The term "fish and fish products" means any aquatic species (including marine mammals and plants) and all products thereof exported from a nation, whether or not taken by fishing vessels of that nation or packed, processed, or otherwise prepared for export in that nation or within the jurisdiction thereof.

(2) LARGE-SCALE DRIFTNET FISHING.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(B) EXCEPTION.—Until January 1, 1994, the term "large-scale driftnet fishing" does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed 5 kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3) LARGE-SCALE DRIFTNET FISHING VESSEL.—The term "large-scale driftnet fishing vessel" means any vessel which is—

(A) used for, equipped to be used for, or of a type which is normally used for large-scale driftnet fishing; or

(B) used for aiding or assisting one or more vessels at sea in the performance of large-scale driftnet fishing, in-

cluding preparation, supply, storage, refrigeration, transportation, or processing.

Subtitle B—Fisheries Conservation Programs

SEC. 12031. IMPORT RESTRICTIONS UNDER FISHERMEN'S PROTECTIVE ACT OF 1967.

(a) PRODUCTS SUBJECT TO RESTRICTION.—Section 8 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978) is amended—

(1) in subsection (a)(4) by striking "fish products" and all that follows through "such duration", and inserting in lieu thereof "any products from the offending country for any duration";

(2) in subsection (c) by striking "fish products or wildlife products" and inserting in lieu thereof "products";

(3) in subsection (e)(2) by striking "fish products and wildlife products" and inserting in lieu thereof "products"; and

(4) in subsection (f)—

(A) in paragraph (1) by striking "fish products and wildlife products" and inserting in lieu thereof "products"; and

(B) in paragraph (5)—

(i) in the first sentence by striking "fish products and wildlife products" and inserting in lieu thereof "products"; and

(ii) in the second sentence by striking "Fish products and wildlife products" and inserting in lieu thereof "Products".

(b) DEFINITIONS.—Section 8(h) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(h)) is amended—

(1) by amending paragraph (2) to read as follows:

"(2) The term 'United States' means the several States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and every other territory and possession of the United States.";

(2) in paragraph (3)—

(A) by inserting "bilateral or" immediately before "multilateral"; and

(B) by inserting ", including marine mammals" immediately after "protect the living resources of the sea";

(3) by striking paragraphs (4) and (6);

(4) by redesignating paragraphs (5) and (7) as paragraphs (4) and (5), respectively; and

(5) by amending paragraph (5), as so redesignated, to read as follows:

"(5) The term 'taking', as used with respect to animals to which an international program for endangered or threatened species applies, means to—

"(A) harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or

"(B) attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.".

SEC. 12032. ENFORCEMENT.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and the Secretary of Defense shall enter into an agreement under section 311(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(a)) in order to make more effective the enforcement of domestic laws and international agreements that conserve and manage the living marine resources of the United States.

(b) TERMS.—The agreement entered into under subsection (a) shall include—

(1) procedures for identifying and providing the location of vessels that are in violation of domestic laws or international agreements to conserve and manage the living marine resources of the United States;

(2) requirements for the use of the surveillance capabilities of the Department of Defense; and

(3) procedures for communicating vessel locations to the Secretary of Commerce and the Coast Guard.

SEC. 12033. TRADE NEGOTIATIONS AND THE ENVIRONMENT.

It is the sense of the Congress that the President, in carrying out multilateral, bilateral, and regional trade negotiations, should seek to—

(1) address environmental issues related to the negotiations;

(2) modify articles of the General Agreement on Tariffs and Trade (referred to in this section as "GATT") to take into consideration the national environmental laws of the GATT Contracting Parties and international environmental treaties;

(3) secure a working party on trade and the environment within GATT as soon as possible;

(4) take an active role in developing trade policies that make GATT more responsive to national and international environmental concerns;

(5) include Federal agencies with environmental expertise during the negotiations to determine the impact of the proposed trade agreements on national environmental law; and

(6) periodically consult with interested parties concerning the progress of the negotiations.

Subtitle C—Fisheries Enforcement in Central Bering Sea

SEC. 12051. SHORT TITLE.

This subtitle may be cited as the "Central Bering Sea Fisheries Enforcement Act of 1992".

SEC. 12052. PROHIBITION APPLICABLE TO UNITED STATES VESSELS AND NATIONALS.

(a) PROHIBITION.—Vessels and nationals of the United States are prohibited from conducting fishing operations in the Central Bering Sea, except where such fishing operations are conducted in accordance with an international fishery agreement to which the United States and the Russian Federation are parties.

(b) CIVIL PENALTIES AND PERMIT SANCTIONS.—A violation of this section shall be subject to civil penalties and permit sanctions

under section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858).

SEC. 12053. PORT PRIVILEGES DENIAL FOR FISHING IN CENTRAL BERING SEA.

(a) DENIAL OF PORT PRIVILEGES.—The Secretary of the Treasury shall, after December 31, 1992, in accordance with recognized principles of international law—

(1) withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for any fishing vessel documented under the laws of a nation that is included on a list published under subsection (b); and

(2) deny entry of such fishing vessel to any place in the United States and to the navigable waters of the United States.

(b) PUBLICATION OF LIST.—Not later than 45 days after the date of enactment of this Act, the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall publish in the Federal Register a list of nations whose nationals or vessels conduct fishing operations in the Central Bering Sea, except where such fishing operations are in accordance with an international fishery agreement to which the United States and the Russian Federation are parties. The Secretary shall publish as an addendum to the list the name of each vessel documented under the laws of each listed nation which conducts fishing operations in the Central Bering Sea. A revised list shall be published whenever the list is no longer accurate, except that a nation may not be removed from the list unless—

(1) the nationals and vessels of that nation have not conducted fishing operations in the Central Bering Sea for the previous 90 days and the nation has committed, through a bilateral agreement with the United States or in any other manner acceptable to the Secretary of Commerce, not to permit its nationals or vessels to resume such fishing operations; or

(2) the nationals and vessels of that nation are conducting fishing operations in the Central Bering Sea that are in accordance with an international fishery agreement to which the United States and the Russian Federation are parties.

(c) NOTIFICATION OF NATION.—Before the publication of a list of nations under subsection (b), the Secretary of State shall notify each nation included on that list and explain the requirement to deny the port privileges of fishing vessels of that nation under subsection (a) as a result of such publication.

SEC. 12054. DURATION OF PORT PRIVILEGES DENIAL.

Any denial of port privileges under section 12053 with respect to any fishing vessel of a nation shall remain in effect until such nation is no longer listed under section 12053(b).

SEC. 12055. RESTRICTION ON FISHING IN UNITED STATES EXCLUSIVE ECONOMIC ZONE.

(a) REGULATIONS.—Within 180 days after the date of enactment of this Act, after notice and public comment, the Secretary of Commerce shall issue regulations, under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and any other applicable law, to prohibit—

(1) any permitted fishing vessel from catching, taking, or harvesting fish in a fishery under the geographical authority of the North Pacific Fishery Management Council if such vessel is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 12053(b);

(2) any processing facility from receiving any fish caught, taken, or harvested in a fishery under the geographical authority of the North Pacific Fishery Management Council if such facility is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 12053(b); and

(3) any permitted fishing vessel from delivering fish caught, taken, or harvested in a fishery under the geographic authority of the North Pacific Fishery Management Council to a processing facility that is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 12053(b).

(b) REQUIREMENT FOR SUBMISSION OF DOCUMENTS.—The Secretary of Commerce shall require under any regulations issued under subsection (a) the submission of any affidavits, financial statements, corporate agreements, and other documents that the Secretary of Commerce determines, after notice and public comment, are necessary to ensure that all vessels and processing facilities are in compliance with this section.

(c) APPEALS; DURATION OF PROHIBITIONS.—The regulations issued under subsection (a) shall—

(1) establish procedures for a person to appeal a decision to impose a prohibition under subsection (a) on a vessel or processing facility owned or controlled by that person; and

(2) specify procedures for the removal of any prohibition imposed on a vessel or processing facility under subsection (a)—

(A) upon publication of a revised list under section 12053(b), and a revised addendum which does not include a fishing vessel owned or controlled by the person who also owns or controls the vessel or facility to which the prohibition applies; or

(B) on the date that is 90 days after such person terminates ownership and control in fishing vessels that are listed on the addendum under section 12053(b).

SEC. 12056. DEFINITIONS.

In this subtitle, the following definitions apply:

(1) CENTRAL BERING SEA.—The term "Central Bering Sea" means the central Bering Sea area which is more than 200 nautical miles seaward of the baselines from which the breadth of the territorial seas of the United States and the Russian Federation are measured.

(2) FISHING VESSEL.—The term "fishing vessel" means any vessel which is used for—

(A) catching, taking, or harvesting fish; or

(B) aiding or assisting one or more vessels at sea in the performance of fishing operations, including preparation, supply, storage, refrigeration, transportation, or processing.

(3) OWNS OR CONTROLS.—When used in reference to a vessel or processing facility—

(A) the term "owns" means holding legal title to the vessel or processing facility; and

(B) the term "controls" includes an absolute right to direct the business of the person owning the vessel or processing facility, to limit the actions of or replace the chief executive officer (by whatever title), a majority of the board of directors, or any general partner (as applicable) of such person, to direct the transfer or operations of the vessel or processing facility, or otherwise to exercise authority over the business of such person, but the term does not include the right simply to participate in those activities of such person or the right to receive a financial return, such as interest or the equivalent of interest, on a loan or other financing obligation.

(4) PERMITTED FISHING VESSEL.—The term "permitted fishing vessel" means any fishing vessel that is subject to a permit issued by the Secretary of Commerce under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(5) PERSON.—The term "person" means any individual (whether or not a citizen of the United States), any corporation, partnership, association, cooperative, or other entity (whether or not organized under the laws of any State), and any State, local, or foreign government, or any entity of such government or the Federal Government.

(6) PROCESSING FACILITY.—The term "processing facility" means any fish processing establishment or fish processing vessel that receives unprocessed fish.

SEC. 12057. TERMINATION.

This subtitle shall cease to have force and effect after the date that is 7 years after the date of enactment of this Act, except that any proceeding with respect to violations of section 12052 occurring prior to such termination date shall be conducted as if that section were still in effect.

Subtitle D—Miscellaneous Provisions

SEC. 12071. INTERMEDIARY NATIONS INVOLVED IN EXPORT OF CERTAIN TUNA PRODUCTS.

(a) INTERMEDIARY NATION DEFINED.—Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362) is amended by redesignating paragraphs (5) through (14) as paragraphs (6) through (15), respectively, and by inserting immediately after paragraph (4) the following new paragraph:

"(5) The term 'intermediary nation' means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B).".

(b) EMBARGO ON IMPORTS FROM INTERMEDIARY NATIONS.—Section 101(a)(2)(C) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(a)(2)(C)) is amended to read as follows:

"(C) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);".

SEC. 12072. AUTHORITY TO EXTEND REEMPLOYMENT RIGHTS.

For purposes of employee rights and entitlements conferred by or pursuant to subchapter IV of chapter 35 of title 5, United States Code, the Secretary of State may, notwithstanding any other law or regulation, extend the reemployment rights of an employee of the United States who, as of January 1, 1992, was serving with the Intergovernmental Panel on Climate Change. Such extension may be made for 2 years, and may be further extended for 1 year, if the Secretary of State determines that such service is in the national interest and is necessary to facilitate the activities of the Intergovernmental Panel on Climate Change or any successor organization.

SEC. 12073. LIMITATION ON TERMS OF VOTING MEMBERS OF REGIONAL FISHERY MANAGEMENT COUNCILS.

Section 302(b)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(b)(3)) is amended by striking "January 1, 1986" the second place it appears and inserting in lieu thereof "December 31, 1987".

SEC. 12074. OBSERVER FEE FOR NORTH PACIFIC FISHERIES RESEARCH PLAN.

Section 313(b)(2)(E) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1862(b)(2)(E)) is amended by striking "one percentum, of the" and inserting in lieu thereof "2 percent, of the unprocessed ex-vessel".

TITLE XIII—FEDERAL DEBT MANAGEMENT RESPONSIBILITY

SEC. 13001. RESTRICTION AND EVALUATION OF BORROWING AUTHORITY OF CERTAIN GOVERNMENT-RELATED CORPORATIONS.

(a) IN GENERAL.—Chapter 31 of title 31, United States Code (relating to the public debt), is amended by adding at the end the following new subchapter:

"SUBCHAPTER III—RESTRICTION AND EVALUATION OF BORROWING AUTHORITY OF CERTAIN GOVERNMENT-RELATED CORPORATIONS

"§ 3141. Limitation on use of proceeds of Treasury obligations to lend amounts to certain newly established Government-related corporations

"(a) IN GENERAL.—None of the proceeds of any obligation issued under subchapter I may be used to lend any amount to a newly established Government-related corporation under any authority of such corporation to borrow from the Treasury, unless—

"(1) such corporation is a qualified corporation, or

"(2) such borrowing is approved in advance in an appropriations Act.

"(b) NEWLY ESTABLISHED GOVERNMENT-RELATED CORPORATION.—For purposes of this section—

"(1) IN GENERAL.—The term 'newly established Government-related corporation' means any Government-related corporation which is established pursuant to any law enacted after December 31, 1992. The Congress may at any time alter, amend, or repeal any law establishing or governing the activities of such a corporation.

"(2) GOVERNMENT-RELATED CORPORATION.—The term 'Government-related corporation' means—

"(A) any corporation owned in whole or part by the Federal Government, and

"(B) any privately owned Government-sponsored enterprise.

"(c) QUALIFIED CORPORATION.—For purposes of this section, the term 'qualified corporation' means any newly established Government-related corporation which is hereafter designated in this subsection as a qualified corporation.

"(d) REQUIRED PROVISIONS.—To be a qualified corporation under this section, the law establishing any privately-owned government-sponsored enterprise shall address issues of safety and soundness by including provisions for—

"(1) effective Federal supervision of safety and soundness and a significant cushion of capital; and

"(2) a requirement that such corporation achieve and maintain a high investment grade rating, as prescribed in subsection (e) below, throughout its corporate existence.

"(e) RATING.—

"(1) IN GENERAL.—Not later than 1 year after the effective date of the law creating each new corporation subject to this Act, the Secretary of the Treasury shall, for each such corporation, contract with 2 nationally recognized statistical rating organizations—

"(A) to assess the likelihood that the corporation will not be able to meet its obligations from its own resources with an assumption that there is no recourse to any implicit Government guarantee and to express that likelihood as a traditional credit rating; and

"(B) to review the rating of the corporation as frequently as the Secretary determines is appropriate, but not less than annually.

"(2) COMMENTS.—The Secretary of the Treasury shall submit comments to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Ways and Means of the House of Representatives on any difference between the evaluation of the rating organizations and that of the Secretary, with special attention to capital adequacy and shall report on any actions the Secretary deems appropriate to assure that each corporation continuously maintains a high investment grade rating.

"(3) REQUIREMENT.—Each such corporation shall achieve and maintain throughout its corporate existence 1 of the 2 high-

est investment grade ratings awarded by each statistical rating organization described in paragraph (4). The Secretary of the Treasury may waive the requirements of this paragraph by published order on such terms and conditions and for such periods of times as the Secretary deems appropriate.

"(4) DEFINITION.—For the purposes of this section, the term 'nationally recognized statistical rating organization' means any entity effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rules for broker-dealers.

"(f) REPORTS.—The Comptroller General of the United States and the Office of Management and Budget each shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Ways and Means of the House of Representatives upon the adequacy of provisions for effective Federal supervision of safety and soundness, including the adequacy of capital standards, contained in any bill to create a privately owned government-sponsored enterprise. Each report shall also recommend provisions to be included in such bill to assure compliance with subsection (e) of this Act.

"§ 3142. Annual report on impact of borrowing by Government-related corporations on public debt

"(a) GENERAL REQUIREMENT.—The Secretary of the Treasury shall annually prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Ways and Means of the House of Representatives a report setting forth the impact of the issuance or guarantee of securities by Government-related corporations (as defined in section 3141(b)(2)) on—

"(1) the rate of interest and amount of discount offered on obligations issued by the Secretary under subchapter I, and

"(2) the marketability of such obligations.

"(b) DEADLINE.—The report required by subsection (a) shall be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Ways and Means of the House of Representatives by October 1 of the 1st calendar year beginning after the date of the enactment of this section, and by each October 1 thereafter.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 31 of title 31, United States Code, is amended by adding at the end the following new items:

"SUBCHAPTER III—RESTRICTION AND EVALUATION OF BORROWING AUTHORITY OF CERTAIN GOVERNMENT-RELATED CORPORATIONS

"3141. Limitation on use of proceeds of Treasury obligations to lend amounts to certain newly established Government-related corporations.

"3142. Annual report on impact of borrowing by Government-related corporations on public debt.".

And the Senate agree to the same.

From the Committee on Ways and Means, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,

J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
GUY VANDER JAGT,

Provided, that solely for consideration of sections 6211-6214 and 7101-7162 of the House bill, and sections 6211-6214, 7107-7177, and 7180-7181 of the Senate amendment, Mr. Downey is appointed in lieu of Mr. Stark and Mr. Shaw is appointed in lieu of Mr. Crane.

THOMAS J. DOWNEY,

Provided, that solely for consideration of sections 6201 and 7001-7014 of the House bill and sections 6201, 7001-7006, 7178 and 7179 of the Senate amendment, Mr. Jacobs is appointed in lieu of Mr. Stark and Mr. Bunning is appointed in lieu of Mr. Crane.

ANDREW JACOBS, Jr.,
JIM BUNNING,

Provided, that solely for consideration of sections 2171-2185, 6220-6251, and titles XIV-XVI of the Senate amendment, Mr. Gradison is appointed in lieu of Mr. Crane.

WILLIS D. GRADISON, Jr.,

Provided, that solely for consideration of title V of the House bill, and title V of the Senate amendment, Mr. Schulze is appointed in lieu of Mr. Crane.

RICHARD T. SCHULZE,

Pursuant to the authority granted on September 30, the Chair announces the following modifications in the appointment of conferees on H.R. 11, Revenue Act of 1992: As additional conferees from the Committee on Agriculture, for consideration of sections 7123, 7126 and title VIII of the House bill, and sections 7171 and 7173 and title VIII of the Senate amendment, and modifications committed to conference:

E DE LA GARZA,
ROBIN TALLON,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
MARY ROSE OAKAR,
CHALMERS P. WYLIE,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of section 9212 of the Senate amendment, and modifications committed to conference:

ESTEBAN E. TORRES,
CARROLL HUBBARD,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of section 9232 of the Senate amendment, and modifications committed to conference:

FRANK ANNUNZIO,
CARROLL HUBBARD,

As additional conferees from the Committee on Education and Labor, for consideration of sections 7123 and 7125 of the House bill, and sections 2173, 4246, 7102, 7134(c), 7142–7143, 7151, 7171, 7172, and 7176 of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
PAT WILLIAMS,
M.G. MARTINEZ,
CARL C. PERKINS,

As additional conferees from the Committee on Education and Labor, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
JOSEPH M. GAYDOS,

As additional conferees from the Committee on Energy and Commerce, for consideration of sections 7104, 7123, 7125, and 7126 of the House bill, and sections 2171–2173, 2175, 2177–2185, 6220, 6231–6251, 7109, 7121, 7136, 7171–7174, 10011(b), 10201, 14111–14140, titles XI, XV, and XVI of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
CARDISS COLLINS,
HENRY A. WAXMAN,
GERRY SIKORSKI,
TERRY L. BRUCE,

Provided, that solely for consideration of sections 10011(b) and 10201 and title XI of the Senate amendment, Mr. Markey, Mr. Synar, and Mr. Boucher are appointed in lieu of Mr. Waxman, Mr. Sikorski, and Mr. Bruce:

ED MARKEY,
MIKE SYNAR,
RICK BOUCHER,

As additional conferees from the Committee on Energy and Commerce, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,

As additional conferees from the Committee on the Judiciary, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
CHARLES SCHUMER,

As additional conferees from the Committee on the Judiciary, for consideration of section 9204 of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
DON EDWARDS,
MIKE SYNAR,
JOHN BRYANT,
HARLEY O. STAGGERS,

As additional conferees from the Committee on the Judiciary, for consideration of title X of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
CHARLES SCHUMER,
WILLIAM J. HUGHES,
JOHN BRYANT,
GEORGE E. SANGMEISTER,
F. JAMES SENSENBRENNER, Jr.,
STEVEN SCHIFF,
JIM RAMSTAD,

As additional conferees from the Committee on Merchant Marine and Fisheries, for consideration of titles XII and XIII of the Senate amendment, and modifications committed to conference:

GERRY E. STUDDS,
CARROLL HUBBARD,
WILLIAM J. HUGHES,
BILLY TAUZIN,
JOLENE UNSOELD,
BOB DAVIS,
DON YOUNG,

As additional conferees from the Committee on Ways and Means, for consideration of sections 7123, 7125, 7126, and title VIII of the House bill, and sections 2173, 7171, 7173, titles VIII and X of the Senate amendment, and modifications committed to conference:

ANDREW JACOBS, Jr.,
HAROLD E. FORD,
ED JENKINS,
TOM DOWNEY,
FRANK GUARINI,
MARTY RUSSO,
DON PEASE,
Managers on the Part of the House.

LLOYD BENTSEN,
MAX BAUCUS,
DAVID BOREN,
GEORGE MITCHELL,
DAVID PRYOR,
BOB PACKWOOD,
WILLIAM V. ROTH, Jr.,
JOHN C. DANFORTH,
JOHN H. CHAFEE,

From the Committees on Banking, Housing, and Urban Affairs; the Judiciary; and Labor, and Human Resources, for the consideration of title 8 of the Senate amendment only:

EDWARD M. KENNEDY,
DON RIEGLE,
JOE BIDEN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11) to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

SUMMARY CONTENTS

(H.R. 11—Statement of Managers)

		Page
I.	ECONOMIC DEVELOPMENTS IN DISTRESSED AREAS—ENTERPRISE ZONES	690
II.	ECONOMIC GROWTH INCENTIVES	725
III.	OFFSETTING REVENUE INCREASES	770
IV.	SIMPLIFICATION PROVISIONS	813
V.	TAXPAYER BILL OF RIGHTS 2	1020
VI.	TECHNICAL CORRECTIONS	1049
VII.	MISCELLANEOUS REVENUE PROVISIONS	1096
VIII.	TRADE PROVISIONS	1203
IX.	INCOME SECURITY AND HUMAN RESOURCES PROVISIONS	1219
X.	MEDICARE PROVISIONS	1328
XI.	AUTHORIZATION FOR ADDITIONAL ASSISTANCE FOR DISTRESSED COMMUNITIES	1392
XII.	HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT	1403
XIII.	GOVERNMENT RELATED CORPORATIONS	1404
XIV.	SMALL GROUP HEALTH MARKET REFORM	1406
XV.	CAR THEFT PREVENTION	1421

CONTENTS

(Revenue Provisions)

	Page
I. ECONOMIC DEVELOPMENT IN DISTRESSED AREAS—ENTERPRISE ZONES (secs. 1101-1104, 1111, 1121, and 1131 of the House bill and secs. 1101-1106, 1111, and 9401-9403 of the Senate amendment)	690
II. ECONOMIC GROWTH INCENTIVES	725
A. Individual Retirement Arrangements (IRAs) (secs. 2001-2003, 2011, 2021-2022 of the Senate amendment)	725
1. Modify IRA deduction	725
2. Special IRAs	727
3. Penalty-free distributions	728
B. Extension of Certain Expiring Tax Provisions	731
1. Exclusion for employer-provided educational assistance (sec. 2002 of the House bill and sec. 2141 of the Senate amendment)	731
2. Exclusion for employer-provided group legal services; tax exemption for qualified group legal services organizations (sec. 2003 of the House bill and sec. 2142 of the Senate amendment)	731
3. Deduction for health insurance costs of self-employed individuals (sec. 2006 of the House bill and secs. 2143, 9221 and 9230 of the Senate amendment)	732
4. Qualified mortgage bonds and mortgage credit certificates (sec. 1203 of the House bill and sec. 2144 of the Senate amendment)	733
5. Qualified small-issue bonds (sec. 1204 of the House bill and sec. 2145 of the Senate amendment)	735
6. Research and experimentation tax credit (sec. 2001 of the House bill and secs. 2146 and 9233 of the Senate amendment)	736
7. Tax credit for low-income rental housing (sec. 1201 of the House bill and secs. 2147 and 9239 of the Senate amendment)	738
8. Targeted jobs tax credit (sec. 1202 of the House bill and sec. 2148 of the Senate amendment)	743
9. Tax credit for orphan drug clinical testing expenses (sec. 2149 of the Senate amendment)	745
10. Excise tax on certain vaccines for the Vaccine Injury Compensation Trust Fund (sec. 2004 of the House bill and sec. 2150 of the Senate amendment)	746
11. Permanent extension of General Fund transfer to Railroad Retirement Tier 2 Fund (sec. 2005 of the House bill and sec. 2151 of the Senate amendment)	748
12. Extension and modification of the nonconventional fuels production credit (sec. 2152 of the Senate amendment)	748
13. Allocation and apportionment of research expenses	750
C. Investment in Real Estate	752
1. Modification of passive loss rules for active real estate persons (sec. 2101 of the House bill and sec. 2101 of the Senate amendment)	752
2. Changes relating to real estate investments by pension funds and others (sec. 2111-2116 of the House bill and the Senate amendment)	753
3. Tax credit for first-time homebuyers (sec. 2121 of the Senate amendment)	761

4. Treatment of certain real property business indebtedness of individuals (sec. 2131 of the Senate amendment) 762
D. Luxury Excise Tax: Diesel Fuel Excise Tax on Motorboats 765
1. Repeal of luxury excise tax on boats, jewelry, furs, and airplanes; index luxury excise tax on automobiles (sec. 2301 of the House bill and sec. 2201 of the Senate amendment) 765
2. Impose excise tax on diesel fuel used in noncommercial motorboats (sec. 2302 of the House bill and sec. 2202 of the Senate amendment) 766
E. Other Incentives 767
1. Corporate alternative minimum tax: Elimination of ACE deprecation adjustment for corporate AMT (sec. 2202 of the House bill and sec. 2161 of the Senate amendment) 767
2. Exclusion for seed capital gain of individuals from certain small business stock (sec. 2162 of the Senate amendment) 768
3. Employer tax credit for FICA paid on tip income (sec. 2401 of the House bill and sec. 9205 of the Senate amendment) 769
III. OFFSETTING REVENUE INCREASES 770
A. General Provisions 770
1. Mark-to-market accounting method for dealers in securities (sec. 3001 of the House bill and the Senate amendment) 770
2. Tax treatment of certain FSLIC financial assistance (sec. 3002 of the House bill and sec. 3005 of the Senate amendment) 782
3. Require taxpayers to include rental value of residence in income without regard to period of rental (sec. 3007 of the Senate amendment) 783
4. Increase recovery period for depreciation of nonresidential real property. (sec. 3003 of the House bill and sec. 3008 of the Senate amendment) 784
5. Modifications to deduction for moving expenses. (sec. 3007 of the House bill and sec. 3010 of the Senate amendment) 785
6. Classification of certain interests in corporations as stock or indebtedness (sec. 3012 of the Senate amendment) 787
7. Pre-contribution of gain in partnerships (sec. 3004 of the House bill and sec. 3013 of the Senate amendment) 788
8. Deduction for spouse or dependent travel expenses (sec. 3014 of the Senate amendment) 789
9. Deny deduction for travel expenses paid or incurred in connection with employment lasting one year or more (sec. 2143(d) of the Senate amendment) 790
10. Modify definition of applicable high-yield original issue discount obligation (sec. 9226(b) of the Senate amendment). 791
11. Deduction for club dues (sec. 3005 of the House bill) 792
12. Increase casualty loss deductible from $100 to $500 793
13. Substantiation of business meal and entertainment expenses 793
14. Treatment of passive activity losses and credits in certain discharges of indebtedness (sec. 2102(b) of the Senate amendment) 794
15. Repeal the stock-for-debt exception to cancellation of indebtedness income 795
16. Excise tax on ozone-zone depleting chemicals (sec. 3015 of the Senate amendment) 796
17. Modify depreciation of water utility property. (sec. 9222(b) of the Senate amendment) 797
B. Extension of Existing Provisions 798
1. Five-year extension of top estate and gift tax rates (sec. 3006 of the House bill and sec. 3101 of the Senate amendment) 798
2. Extension of personal exemption phaseout (sec. 3102 of the Senate amendment) 799
3. Extension of itemized deduction limitation (sec. 3103 of the Senate amendment) 799
C. Estimated Tax Provisions 800
1. Modify estimated tax requirements for individuals (sec. 3101 of the House bill and sec. 3002 of the Senate amendment) 800

2. Modify estimated tax requirements for corporations (sec. 3102 of the House bill and sec. 3003 of the Senate amendment) 801

D. Administrative Provisions 803

1. Expansion of 45-day interest-free period for certain refunds (sec. 3004 of the Senate amendment) 803
2. Reporting of amounts of property tax reimbursements paid to sellers of residences (sec. 3006 of the Senate amendment) 804
3. Require reporting of taxpayer identification numbers of parties in seller-financed mortgage transactions (sec. 3011 of the Senate amendment) 805

E. Taxable Year Election for Partnerships, S Corporations, and Personal Service Corporations (secs. 3201–3204 of the House bill and the Senate amendment) 806

F. Withholding Provisions 811

1. Withholding on supplemental wages (sec. 3301 of the Senate amendment) 811
2. Withholding on certain gambling winnings (sec. 3302 of the Senate amendment) 812
3. Increase backup withholding rate (sec. 2143(c) of the Senate amendment) 812

IV. SIMPLIFICATION PROVISIONS 813

A. Individual Tax Provisions 813

1. Rollover of gain on sale of principal residence (sec. 4102 of the House bill and sec. 4101 of the Senate amendment) 813
2. De minimis exception to passive loss rules (sec. 4103 of the House bill) 815
3. Permit payment of taxes by credit card (sec. 4104 of the House bill) 816
4. Election by parent to claim unearned income of certain children on parent's return (sec. 4105 of the House bill and sec. 4102 of the Senate amendment) 820
5. Simplified foreign tax credit limitation for individuals (sec. 4106 of the House bill and sec. 4103 of the Senate amendment) 821
6. Personal transactions by individuals in foreign currency (sec. 4107 of the House bill and sec. 4104 of the Senate amendment) 822
7. Tax treatment of certain combat pay (sec. 4108 of the House bill and secs. 4105 and 4845 of the Senate amendment) 824
8. Expanded access to simplified income tax returns (sec. 4109 of the House bill and sec. 4106 of the Senate amendment) 826
9. Simplification of tax treatment of rural letter carrier's vehicle expenses (sec. 4110 of the House bill and sec. 4107 of the Senate amendment) 827
10. Simplification of the earned income tax credit (sec. 4101 of the House bill and sec. 4109 of the Senate amendment) 828
11. Extension of the earned income tax credit to military personnel stationed overseas (sec. 4844 of the Senate amendment) 829

B. Pension Simplification 831

1. Simplified distribution rules (sec. 4201–4203 of the House bill and secs. 4201–4204 of the Senate amendment) 831
2. Increased access to pension plans 836
   a. Plans of small employers (secs. 4211–4212 the Senate amendment) 836
   b. Repeal of limitation on ability of tax-exempt employers to maintain cash or deferred arrangements (sec. 4211 of the House bill and sec. 4213 of the Senate amendment) 838
   c. Duties of master and prototype plan sponsors (sec. 4212 of the House bill and sec. 4214 of the Senate amendment) 839
3. Nondiscrimination provisions 840

a. Simplification of nondiscrimination tests applicable under sections 401(k) and (m) (sec. 4222 of the House bill and sec. 4224 of the Senate amendment) 840
b. Definition of highly compensated employees and family aggregation rules (sec. 4223 of the House bill and sec. 4221 of the Senate amendment) 845
c. Election to treat base pay as compensation (sec. 4222 of the Senate amendment) 848
d. Modification of additional participation requirements (sec. 4223 of the Senate amendment) 848
4. Miscellaneous pension simplification 849
a. Definition of leased employee (sec. 4221 of the House bill and sec. 4231 of the Senate amendment) 849
b. Cost-of-living adjustments (sec. 4224 of the House bill and sec. 4233 of the Senate amendment) 853
c. Plans covering self-employed individuals (sec. 4225 of the House bill and sec. 4234 of the Senate amendment) 854
d. Alternative full funding lmitation (sec. 4226 of the House bill and sec. 4236 of the Senate amendment) 854
e. In-service distributions from rural cooperative plans (sec. 4227 of the House bill and sec. 4237 of the Senate amendment) 856
f. Special rules for plans covering pilots (sec. 4228 of the House bill and sec. 4245 of the Senate amendment) 856
g. Elimination of special vesting rule for multiemployer plans (sec. 4220 of the House bill) 857
h. Treatment of deferred compensation plans of State and local governments and tax-exempt organizations (sec. 4230 of the House bill and sec. 4248 of the Senate amendment) 858
i. Limits on contributions and benefits under governmental plans (sec. 4231 of the House bill and sec. 4238 of the Senate amendment) 860
j. Use of 501(c)(21) black lung trust assets to fund retiree health benefits (sec. 4232 of the House bill and sec. 4239 of the Senate amendment) 861
k. Definition of employer reversion (sec. 4233 of the House bill) 862
l. Clarification of application of health care continuation rules to savings and loan associations (sec. 4234 of the House bill) 862
m. Elimination of half-year requirements (sec. 4232 of the Senate amendment 864
n. Penalties for failure to provide reports relating to pension payments (sec. 4240 of the Senate amendment) 864
o. Contributions on behalf of disabled employees (sec. 4241 of the Senate amendment) 865
p. Affliation requirements for employers jointly maintaining a VEBA (sec. 4242 of the Senate amendment) 865
q. Disaggregation of union plans (sec. 4243 of the Senate amendment) 867
r. Uniform retirement age (sec. 4244 of the Senate amendment) 868
s. National commission on private pension plans (sec. 4246 of the Senate amendment) 868
t. Full funding limitation of multiemployer plans (sec. 4235 of the Senate amendment) 869
u. Church pension plans (sec. 4247 of the Senate amendment) 869
v. Date for adoption of plan amendments (sec. 4249 of the Senate amendment) 871
C. Partnership Provisions 872
1. General partnership provisions 872
a. Simplified flow-through for large partnerships (sec. 4301 of the House bill and the Senate amendment) 872
b. Simplified audit procedures for large partnerships (sec. 4302 of the House bill and the Senate amendment) 873

c. Advance due date for furnishing information to partners of large partnerships (sec. 4303 of the House bill and the Senate amendment) 877
d. Partnership returns on magnetic media (sec. 4304 of the House bill and the Senate amendment) 878
2. IRA filing requirements for income from certain unrelated trades and businesses 878
3. Partnership proceedings under TEFRA 880
a. Clarify the treatment of partnership items in deficiency proceedings (sec. 4311 of the House bill and the Senate amendment) 880
b. Permit the IRS to rely on partnership returns to determine the proper audit procedures (sec. 4312 of the House bill and the Senate amendment) 881
c. Statute of limitations (sec. 4313 of the House bill and the Senate amendment) 882
d. Expand small partnership exception from TEFRA (sec. 4314 of the House bill and the Senate amendment) 884
e. Exclude partial settlements from 1-year assessment rule (sec. 4315 of the House bill and the Senate amendment) 885
f. Extend time for filing a request for administrative adjustment (sec. 4316 of the House bill and the Senate amendment) 886
g. Provide innocent spouse relief for TEFRA proceedings (sec. 4317 of the House bill and the Senate amendment) 886
h. Determine penalties at the partnership level (sec. 4318 of the House bill and the Senate amendment) 887
i. Clarify jurisdiction of the Tax Court (sec. 4319 of the House bill and the Senate amendment) 888
j. Treatment of premature petitions filed by certain partners (sec. 4320 of the House bill and the Senate amendment) 888
k. Clarify bond requirement for appeals from TEFRA proceedings (sec. 4321 of the House bill and the Senate amendment) 889
l. Suspend interest where there is a delay in computational adjustment resulting from TEFRA settlements (sec. 4322 of the House bill and the Senate amendment) 890
m. Extend time for filing a request for administrative adjustment relating to worthless securities and bad debts (sec. 4316(b) of the Senate amendment) 890
D. Foreign Tax Provisions 891
1. Deferral of tax on income earned through foreign corporations and exceptions to deferral (secs. 4401-4404 of the House bill and the Senate amendment) 891
2. Treatment of controlled foreign corporations (secs. 4411-4414 of the House bill and secs. 4411-4413 of the Senate amendment 895
3. Translation of foreign Taxes into U.S. dollar amounts (sec. 4421 of the House bill and the Senate amendment) 906
4. Foreign tax credit limitation under the alternative minimum tax (sec. 4422 of the House bill and the Senate amendment) 910
5. Inbound and outbound transfers (secs. 4423-4424 of the House bill and the Senate amendment) 911
E. Intangibles 916
1. Amortization of goodwill and certain other intangibles (sec. 4501 of the House bill and sec. 4551 of the Senate amendment) 916
2. Modify special treatment of certain liquidation payments (sec. 4502 of the House bill and sec. 4552 of the Senate amendment) 938
F. Subchapter S Corporation Provisions 940

1. Determination of whether S corporation has more than one class of stock (sec. 4601 of the House bill and sec. 4501 of the Senate amendment) ... 940
2. Authority to validate certain invalid elections (sec. 4602 of the House bill and sec. 4502 of the Senate amendment) ... 942
3. Treatment of distributions by S corporation during a loss year (sec. 4603 of the House bill and sec. 4503 of the Senate amendment) ... 943
4. Treatment of S. corporations as shareholders in C corporations (sec. 4604(a) of the House bill and sec. 4504(a) of the Senate amendment) ... 945
5. S corporations permitted to hold subsidiaries (sec. 4604(b) of the House bill and sec. 4504(b) of the Senate amendment) ... 946
6. Elimination of pre-1983 earnings and profits of S corporations (sec. 4604(c) of the House bill and sec. 4504(c) of the Senate amendment) ... 946
7. Treatment of items of income in respect of a decedent held by an S corporation (sec. 4604(d) of the House bill and sec. 4504(d) of the Senate amendment) ... 947
8. Certain trusts eligible to hold stock in S corporations (sec. 4505 of the Senate amendment) ... 948

G. Accounting Provisions ... 950
1. Modifications to the look-back method for long-term contracts (sec. 4611 of the House bill and sec. 4511 of the Senate amendment) ... 950
2. Simplified method of applying uniform cost capitalization rules (sec. 4612 of the House bill and sec. 4512 of the Senate amendment) ... 953
3. Treatment of certain amounts received by operators of licensed cotton warehouses (sec. 4513 of the Senate amendment) ... 953

H. Regulated Investment Company Provisions ... 955
1. Repeal the short-short test for regulated investment companies (sec. 4621 of the House bill) ... 955
2. Require brokers and mutual funds to report basis to customers (sec. 4622 of the House bill) ... 955
3. Permit common trust funds to convert to regulated investment companies without taxation (sec. 4623 of the House bill and sec. 9208 of the Senate amendment) ... 958
4. Permit regulated investment companies to convert to common trust funds without taxation (sec. 9209 of the Senate amendment) ... 959

I. Tax-Exempt Bond Provisions ... 960
1. Simplification of arbitrage rebate requirement for governmental bonds (sec. 4631 of the House bill and sec. 4521 of the Senate amendment) ... 961
2. Simplification of compliance with 24-month arbitrage rebate exception for construction bonds (sec. 4632 of the House bill and sec. 4522 of the Senate amendment) ... 962
3. Simultaneous issuance of certain discreet issues not aggregated (sec. 4633 of the House bill and sec. 4523 of the Senate amendment) ... 962
4. Repeal of unrelated and disproportionate use limit (sec. 4634 of the House bill) ... 963
5. Simplification of arbitrage rebate requirement for smaller issuers of governmental bonds (sec 4635 of the House bill) .. 963
6. Repeal of 150-percent of debt service limit (sec. 4636 of the House bill) ... 964
7. Clarification of definition of "investment-type property" (sec. 4638 of the House bill) ... 965
8. Expand exception to pro rata disallowance of bank interest expense related to investment in tax-exempt bonds (sec. 4524 of the Senate amendment) ... 967
9. Modification of rules governing qualified 501(c)(3) bonds (sec. 4525 of the Senate amendment) ... 968

10. Authority for Treasury Department to exempt certain taxpayers from tax-exempt interest reporting requirements (sec. 4526 of the Senate amendment)........ 971
11. Repeal of expired provisions (sec. 4637 of the House bill and sec. 4528 of the Senate amendment)........ 971
12. Bonds for the United Nations (sec. 4527 of the Senate amendment)........ 971
13. Treasury Department regulatory authority to integrate arbitrage rebate and yield restriction requirements in certain cases (sec. 4529 of the Senate amendment)........ 972
J. Insurance Provisions........ 975
1. Treatment of certain insurance contracts on retired lives (sec. 4641 of the House bill and sec. 4531 of the Senate amendment)........ 975
2. Treatment of modified guaranteed contracts (sec. 4642 of the House bill and sec. 4532 of the Senate amendment)........ 976
K. Cooperative Provisions........ 979
1. Discharge of indebtedness income from prepayment of REA loans (sec. 4541 of the Senate amendment)........ 979
2. Treatment of certain amounts received by telephone cooperatives (sec. 4542 of the Senate amendment)........ 980
3. Treatment of certain housing cooperatives (sec. 4543 of the Senate amendment)........ 981
4. Treatment of safe-harbor leases of membership organizations (sec. 4544 of the Senate amendment)........ 983
L. Other Simplification Provisions........ 984
1. Closing of partnership year with respect to decreased partners (sec. 4651 of the House bill and sec. 4561 of the Senate amendment)........ 984
2. Treatment of built-in losses for purposes of the corporate alternative minimum tax (sec. 4652 of the House bill and sec. 4562 of the Senate amendment)........ 985
3. Increase transfer to the Reforestation Trust Fund (sec. 4563 of the Senate amendment)........ 985
4. Private foundation common investment fund (sec. 4564 of the Senate amendment)........ 986
5. Determinations of gas produced from qualifying sources under the nonconventional fuels production credit (sec. 4565 of the Senate amendment)........ 988
M. Estate and Gift Tax Provisions........ 991
1. Waiver of right of recovery for certain marital deduction property (4701 of the House bill and sec. 4601 of the Senate amendment)........ 991
2. Inclusion in gross estate of certain gifts made within three years of death (sec. 4702 of the House bill and sec. 4602 of the Senate amendment)........ 992
3. Definition of qualified terminable interest property (sec. 4703 of the House bill and sec. 4603 of the Senate amendment)........ 993
4. Include fractional share of property qualifying for the marital deduction in the gross estate (sec. 4704 of the House bill and sec. 4604 of the Senate amendment)........ 994
5. Requirements for qualified domestic trust (sec. 4705 of the House bill and sec. 4605 of the Senate amendment)........ 995
6. Election of special use valuation of farm property for estate tax purposes (sec. 4706 of the House bill and sec. 4606 of the Senate amendment)........ 995
7. Income taxation of accumulation trusts (sec. 4607 of the Senate amendment)........ 995
8. Estate tax recapture from cash leases of specially valued property (sec. 4608 of the Senate amendment)........ 997
9. Interest rates on intra-familial loans made in connection with land sales (sec. 4609 of the Senate amendment)........ 998
N. Excise Tax Provisions........ 1000
1. Fuels tax provisions........ 1000

a. Consolidate provisions for imposing diesel and aviation fuel excise taxes (sec. 4801 of the House bill and sec. 4701 of the Senate amendment) ... 1000
b. Permit refund of tax to taxpayer for diesel and aviation fuel resold to certain exempt purchasers (sec. 4802(a) of the House bill and sec. 4702(a) of the Senate amendment ... 1000
c. Consolidate tax credit and refund provisions of fuel excise taxes (sec. 4802(b) of the House bill and sec. 4702(b) of the Senate amendment) ... 1001
d. Repeal waiver requirement for fuel tax refunds for cropdusters and other fertilizer applicators (sec. 4802(c) of the House bill and sec. 4702(c) of the Senate amendment) ... 1002
e. Authorize exceptions from information reporting for certain sales of diesel and aviation fuel (sec. 4803 of the House bill and sec. 4703 of the Senate amendment) ... 1002
2. Provisions relating to distilled spirits, wines, and bear (secs. 4811-4821 of the House bill and secs. 4711-4721 of the of the Senate amendment) ... 1003
3. Other excise tax provisions ... 1006
a. Authority for IRS to grant exemptions from registration requirements (sec. 4831 of the House bill and sec. 4731 of the Senate amendment) ... 1006
b. Repeal temporary reduction in tax on piggyback trailers (sec. 4832(a) of the House bill and sec. 4733(a) of the Senate amendment) ... 1007
c. Expiration of excise tax on deep seabed minerals (sec. 4832(b) of the House bill and sec. 4773(b) of the Senate amendment) ... 1007
d. Firearms excise tax exemption for small manufacturers (sec. 4732 of the Senate amendment) ... 1008
e. Expanded definition of wine spirits (sec. 4722 of the Senate amendment) ... 1008
f. Exemption for certain ferries from excise tax on ship passenger departures (sec. 4734 of the Senate amendment) ... 1009
g. Application of aircraft fuels taxes or air passenger and air freight taxes to certain business aircraft (sec. 4735 of the Senate amendment) ... 1009
O. Compliance Provisions ... 1010
1. General administrative provisions ... 1010
a. Simplify employment tax reporting for household employees (sec. 4901 of the House bill and sec. 4801 of the Senate amendment) ... 1010
b. Clarify that reproduction from digital imaging are reproductions for recordkeeping purposes (sec. 4904 of the House bill and sec. 4802 of the Senate amendment) 1011
c. Repeal of authority to disclose whether a prospective juror has been audited (sec. 4905 of the House bill and sec. 4803 of the Senate amendment) ... 1012
d. Repeal TEFRA audit rules for S corporations (sec. 4906 of the House bill and sec. 4804 of the Senate amendment) ... 1012
e. Clarify stature of limitations for items from passthrough entities (sec. 4907 of the House bill and sec. 4805 of the Senate amendment) ... 1013
f. Simplify estimated tax payment rules for small corporations (sec. 4902 of the House bill) ... 1013
g. Interest rate on large corporate underpayments (sec. 4903 of the House bill) ... 1014
2. Tax Court provisions ... 1015
a. Clarify jurisdiction of Tax Court with respect to overpayment determinations (sec. 4911 of the House bill and sec. 4811 of the Senate amendment) ... 1015

b. Clarify procedures for administrative cost awards (sec. 4912 of the House bill and sec. 4812 of the Senate amendment) 1016
c. Clarify Tax Court jurisdiction over interest determinations (sec. 4913 of the House bill and sec. 4813 of the Senate amendment) 1016
d. Clarify net worth requirements for awards of administrative or litigation costs (sec. 4914 of the House bill and sec. 4814 of the Senate amendment) 1017
3. Permit IRS to enter into cooperative agreements with State authorities (sec. 4921 of the House bill and sec. 4821 of the Senate amendment) 1018
4. Other compliance provisions 1018
a. Extension of authority for IRS undercover operations (sec. 4841 of the Senate amendment) 1018
b. Disclosure of returns on cash transactions (sec. 4842 of the Senate amendment) 1019
c. Authority to accept signature alternatives (sec. 4843 of the Senate amendment) 1020
V. TAXPAYER BILL OF RIGHTS 2 1020
A. Taxpayer Advocate 1020
1. Establishment of position of taxpayer advocate within Internal Revenue Service (sec. 5001 of the House bill and the Senate amendment) 1020
2. Expansion of authority to issue taxpayer assistance orders (sec. 5002 of the House bill and the Senate amendment) 1022
B. Modifications to Installment Agreement Provisions 1023
1. Notification of reasons for termination or denial of installment agreements (sec. 5101 of the House bill and the Senate amendment) 1023
2. Administrative review of denial of requests for, or termination of, installment agreements (sec. 5102 of the House bill and the Senate amendment) 1024
3. Running of failure to pay penalty suspended during the period an installment agreement is in effect (sec. 5103 of the House bill) 1024
C. Interest 1025
1. Expansion of authority to abate interest (sec. 5201 of the House bill and the Senate amendment) 1025
2. Extension of interest-free period for payment of tax after notice and demand (sec. 5202 of the House bill and the Senate amendment) 1025
D. Joint Returns 1026
1. Disclosure of collection activities (sec. 5301 of the House bill and the Senate amendment) 1026
2. Joint return may be made after separate returns without full payment of tax (sec. 5302 of the House bill and the Senate amendment) 1026
E. Collection Activities 1027
1. Modifications to lien and levy provisions (sec. 5401 of the House bill and the Senate amendment) 1027
2. Offers-in-compromise (sec. 5402 of the House bill and the Senate amendment) 1029
3. Notification of examination (sec. 5403 of the House bill and the Senate amendment) 1029
4. Modification of certain limits on recovery of civil damages for unauthorized collection activities (sec. 5404 of the House bill and the Senate amendment) 1030
5. Designated summons (sec. 5405 of the House bill and the Senate amendment) 1030
F. Information Returns 1032
1. Phone numbers of persons providing payee statement required to be shown on such statement (sec. 5501 of the House bill and the Senate amendment) 1032
2. Civil damages for fraudulent filing of information returns (sec. 5502 of the House bill and the Senate amendment) 1033

3. Requirement to verify accuracy of information returns (sec. 5503 of the House bill and the Senate amendment) 1033
G. Modification to Penalty for Failure to Collect and Pay Over Tax. 1034
1. Preliminary notice requirements (sec. 5601 of the House bill and the Senate amendment) 1034
2. No penalty if prompt notification of IRS (sec. 5602 of the House bill and the Senate amendment) 1035
3. Disclosure of certain information where more than one person subject to penalty (sec. 5603 of the House bill and the Senate amendment) 1035
4. Penalties relating to failure to collect and pay over tax (sec. 5604 of the House bill and the Senate amendment) 1036
H. Awarding of Costs and Certain fees 1038
1. Motion for disclosures of information (sec. 5701 of the House bill and the Senate amendment) 1038
2. Increased limit on attorney fees (sec. 5702 of the House bill and the Senate amendment) 1038
3. Failure to agree to extension not taken into account (sec. 5703 of the House bill and the Senate amendment) 1039
4. IRS employers personally liable in certain cases (sec. 5704 of the House bill) 1039
I. Other Provisions 1040
1. Required content of certain notices (sec. 5801 of the House bill and the Senate amendment) 1040
2. Treatment of substitute return forms for purposes of the penalty for failure to pay taxes (sec. 5802 of the House bill and the Senate amendment) 1040
3. Relief from retroactive application of Treasury Department regulations (sec. 5803 of the House bill and the Senate amendment) 1041
4. Required notice to taxpayers of certain payments (sec. 5804 of the House bill and the Senate amendment) 1042
5. Unauthorized enticement of information disclosure (sec. 5805 of the House bill and the Senate amendment) 1043
J. Form Modifications 1044
1. Explanation of certain provisions (sec. 5901 of the House bill and the Senate amendment) 1044
2. Improved procedures for notifying IRS of changes of address or name (sec. 5902 of the House bill and the Senate amendment) 1044
3. Rights and responsibilities of divorced individuals (sec. 5903 of the House bill and the Senate amendment) 1045
K. Studies 1045
1. Pilot programs for appeal of enforcement actions (sec. 5911 of the House bill and the Senate amendment) 1045
2. Study on taxpayers with special needs (sec. 5912 of the House bill and the Senate amendment) 1046
3. Reports on taxpayers rights education program (sec. 5913 of the House bill and the Senate amendment) 1046
4. Biennial reports on misconduct by IRS employees (sec. 5914 of the House bill and the Senate amendment) 1047
5. Study of notices of deficiency (sec. 5915 of the House bill and the Senate amendment) 1047
6. Notice and form accuracy study (sec. 5916 of the House bill and the Senate amendment) 1048
7. IRS employees' suggestions study (sec. 5917 of the House bill and the Senate amendment) 1048
VI. TECHNICAL CORRECTIONS 1049
VII. MISCELLANEOUS REVENUE PROVISIONS 1096
A. Individual Income Tax Provisions 1096
1. Expansion of education savings bond provisions (sec. 9201 of the Senate amendment) 1096
2. Losses on prior sales of principal residences (sec. 9203 of the Senate amendments) 1097
3. Tax exemption of veterans' benefits (sec. 9206 of the Senate amendment) 1098

4. Treatment of cancellation of certain student loans (sec. 9211 of the Senate amendment) 1099
5. Rollover of military separation pay (sec. 9218 of the Senate amendment) 1100
6. Change in the treatment of involuntary conversions for principal residences in Presidentially declared disaster areas (sec. 9227 of the Senate amendment) 1101
7. Modification of the exclusion from income for certain Federal foster care payments (sec. 9234 of the Senate amendment) 1102
8. Penalty-free withdrawals from annuities for certain higher education expenses 1102
9. Exclusion from gross income for amounts paid under a life insurance contract by reason of terminal illness (sec. 9202 of the Senate amendment) 1103
10. State taxation of nonresident retirement benefits (sec. 9204 of the Senate amendment) 1104
11. Treatment of unpaid child support (sec. 9215 of the Senate amendment) 1105
12. Expansion of qualified scholarships to cover room, board, and travel (sec. 9229 of the Senate amendment) 1107
13. Increase the threshold for withholding on gambling winnings (sec. 9226(a) of the Senate amendment) 1107

B. Provisions Relating to Charitable Contributions and Tax-Exempt Organizations 1108
1. AMT relief for gifts of appreciated property (sec. 2201 of the House bill and sec. 9001 of the Senate amendment) 1108
2. Allocation and apportionment of deductions for charitable contributions (sec. 9002 of the Senate amendment) 1111
3. Substantiation and information disclosure requirements for certain contributions (secs. 9003–9004 of the Senate amendment) 1113
4. Corporate sponsorship payments received by tax-exempt organizations in connection public events (sec. 9005 of the Senate amendment) 1115
5. Improved fundraising disclosure (secs. 7202–7203 of the House bill and sec. 9006 of the Senate amendment) 1120
6. Required notices to charitable beneficiaries of charitable remainder trusts 1122
7. Application of private inurement rule to tax-exempt civic leagues 1124
8. Exemption from certain wagering taxes for charitable organizations 1125
9. Conducting games of chance not treated as unrelated trade or business 1126
10. Treatment of nonprofit health insurance providers 1127
11. Tax sheltered annuities for Indian tribes 1128
12. Treatment of certain costs of private foundation in removing hazardous substances (sec. 9225 of the Senate amendment) 1129
13. Unrelated business income tax treatment of mailing lists (sec. 9238 of the Senate amendment) 1130

C. Foreign Provisions 1131
1. Pass-through treatment for certain dividends paid by a regulated investment company to foreign persons (sec. 9101 of the Senate amendment) 1131
2. Election not to apply 90-percent limitation on alternative minimum tax foreign tax credit (sec. 9102 of the Senate amendment) 1137
3. Income from investment by domestic gas and electric utilities in foreign gas and electric utilities (sec. 9103 of the Senate amendment) 1141
4. Commodities income of a controlled foreign corporation (sec. 9104 of the Senate amendment) 1146
5. Treasury study on competitiveness (sec. 9105 of the Senate amendment) 1148

6. Denial of deductions allocable to Cuban source income of a controlled foreign corporation (sec. 9223 of the Senate amendment) ... 1149
7. Source of rental income from lease of certain aircraft (sec. 9240 of the Senate amendment) ... 1151
D. Employee Benefit Provisions ... 1155
1. Deductibility of certain flight-training expenses ... 1155
2. Deduction for dividends paid on employer securities held in an ESOP ... 1156
3. Exemption for certain death and disability payments to public safety employees ... 1157
4. Treatment of fringe benefits of airline affiliate employees ... 1158
E. Tax-Exempt Bond Provisions ... 1158
1. Texas Veterans' Land Bond Program ... 1158
2. St. Paul Port Authority bonds ... 1159
3. Modification of restrictions on rules governing investment in certain tax-exempt bonds by financial institutions (sec. 6102 of the Senate amendment) ... 1160
F. Other Income Tax Provisions ... 1160
1. Increase maximum number of shareholders of an S corporation ... 1160
2. S. corporations eligible for rules applicable to real property subdivided for sale by noncorporate taxpayers ... 1160
3. Treatment of livestock sold on account of weather-related conditions ... 1161
4. Depreciation of tuxedos held for rental ... 1162
5. Treatment of certain compensation payable by certain personal service corporations using an accrual method of accounting ... 1163
6. Allow certain investment expenses to be deducted for AMT purposes ... 1164
7. Clarification of the eligibility of relocated buildings for the rehabilitation tax credit ... 1165
8. Treatment of certain small property and casualty insurance companies under the alternative minimum tax ... 1166
9. Treatment of associations that result from the merger of certain farm credit associations ... 1167
10. Tax treatment of debt-for-debt exchanges ... 1168
11. Treatment of deposits under certain perpetual insurance policies ... 1169
12. Deduction for small property and casualty insurance companies ... 1170
13. Certain distributions by Alaska Native Corporations ... 1172
14. Alaska Native Corporations standing with respect to sale of losses. (sec. 9219 of the Senate amendment) ... 1173
15. Treatment of certain residual-market insurance companies under the alternative minimum tax (sec. 9216 of the Senate amendment) ... 1178
16. Treatment of gains and losses from certain dispositions by farmers cooperatives (sec. 9217 of the Senate amendment) .. 1179
17. Elective deferral of income for corps grown in qualified disaster areas (sec. 9231 of the Senate amendment) ... 1182
18. Accounting for charges by real estate reporting persons for costs of complying with reporting requirements of Code section 6045 (sec. 9237 of the Senate amendment) ... 1183
19. Application of passive loss limitations to timber activities (sec. 2102(a) of the Senate amendment) ... 1183
20. Treatment of contributions in aid of construction (sec. 9222(a) of the Senate amendment) ... 1184
21. Prohibit transfer of tax benefits and liabilities between savings and loan holding companies and savings associations (sec. 9232 of the Senate amendment) ... 1185
22. Tax treatment of certain cargo containers ... 1187
G. Other Excise, Employment, and Estate and Gift Tax Provisions .. 1189
1. Exemption from truck excise tax for certain nonprofit educational organizations (sec. 9210 of the Senate amendment) 1189
2. Excise tax on certain reloaded ammunition ... 1189

3. Exemption from retail excise tax for trucks used to mix explosive chemicals (sec. 9228 of the Senate amendment).... 1190
4. Extension of period for credit or refund of certain overpayments of windfall profit tax on domestic crude oil (sec. 9243 of the Senate amendment) 1190
5. Application of harbor maintenance tax on ship passenger fares (sec. 9236 of the Senate amendment).... 1191
6. Employment tax status of certain fishermen (sec. 4831 of the Senate amendment) 1192
7. FICA exemption for full-time students employed by seasonal children's camps 1193
8. Special estate tax valuation recapture 1193
H. Other Provisions 1194
1. Definition of former spouse under CIA retirement and disability system 1194
2. Mount Rushmore Commemorative Coin Act (sec. 9212 of the Senate amendment) 1195
3. Misuse of the symbols, emblems or names related to the Department of the Treasury (sec. 7201 of the House bill)..... 1196
I. Other Studies and Reports 1196
1. Treasury study on Japanese capital and securities markets (sec. 11001–11004 of the Senate amendment).... 1196
2. Treasury study of recovery period for the depreciation of semi-conductor manufacturing equipment (sec. 9207 of the Senate amendment) 1197
3. Treasury study of travel expenses of loggers (sec. 9235 of the Senate amendment) 1197
4. Congressional Budget Office study on municipal bond financing (sec. 9242 of the Senate amendment).... 1198
5. Require annual report on Federal finances (sec. 9220 of the Senate amendment) 1198
6. PBGC report on employers with underfunded pension plans.. 1200
J. User Fee Provisions 1200
1. Repeal of recreational boat user fee (sec. 13001 of the Senate amendment).... 1200
2. Imposition of automated tariff filing and information user fee (sec. 13002 of the Senate amendment) 1201

I. ECONOMIC DEVELOPMENT IN DISTRESSED AREAS—ENTERPRISE ZONES

PRESENT LAW

The Internal Revenue Code does not contain general rules that target specific geographic areas for special Federal income tax treatment. Within certain Code sections, however, there are definitions of targeted areas for limited purposes (e.g., low-income housing credit and qualified mortgage bond provisions target certain economically distressed areas). In addition, present law provides favorable Federal income tax treatment for certain U.S. corporations that operate in Puerto Rico, the U.S. Virgin Islands, or a possession of the United States to encourage the conduct of trades or businesses within these areas.

HOUSE BILL

Designation of tax enterprise zones

In general

A total of 50 tax enterprise zones may be designated before the end of 1996. Tax enterprise zones are either urban tax enterprise zones or rural development investment zones, and are to be designated from areas nominated by State and local governments,[1] a State-chartered economic development corporation, or a governing body of an Indian reservation.

The Secretary of Housing and Urban Development (HUD) may designate 25 urban tax enterprise zones (up to 8 zones selected in 1992 through 1993, 7 zones in 1994, 6 zones in 1995, and 4 zones in 1996). Any shortfall in designations of zones may be carried forward to the next year, but not beyond 1996.

The Secretary of Agriculture (in consultation with the Secretary of Commerce) may designate 25 rural development investment zones (at least one of which must be located on an Indian reservation). The maximum number of rural development investment zones designated each year is the same as with urban tax enterprise zones.

Zone designations generally will remain in effect for 15 years.[2]

---

[1] For purposes of the House bill, the term "local government" means any county, city, town, township, parish, village, or other general purpose political subdivision of a State (and certain combinations of such political subdivisions).

[2] The designation of an area as a tax enterprise zone may be revoked if the Secretary of HUD (or, in the case of a rural development investment zone, the Secretary of Agriculture) determines after a hearing on the record involving officials of the State or local government involved that (1) the boundaries of the area have been modified, or (2) the State or local government is not complying substantially with the commitments made as part of the required course of action (described below).

Eligibility criteria for urban tax enterprise zones

To be eligible for designation as an urban tax enterprise zone, a nominated area is required to have all of the following characteristics: (1) a population of at least 4,000; (2) a condition of pervasive poverty, unemployment, and general economic distress (which may include distress from a high incidence of crime and narcotics use); (3) with respect to size, (a) does not exceed 20 square miles, (b) consists of not more than three noncontiguous parcels within the same metropolitan area, and (c) is located entirely within one State; (4) an unemployment rate of at least 1.5 times the national unemployment rate; (5) poverty rates of at least 20 percent in each of 90 percent of the area's census tracts; (6) does not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade); and (7) a satisfactory course of action (described below) adopted by the State and local governments designed to promote economic development in the nominated area.

Eligibility criteria for rural development investment zones

To be nominated as a rural development investment zone, an area is required to be either outside a standard metropolitan statistical area (within the meaning of section 143(k)(2)(B)) or determined by the Secretary of Agriculture (after consultation with the Secretary of Commerce) to be a rural area. To be eligible for designation, a rural development investment zone is required to possess the following four characteristics: (1) a population of at least 1,000; (2) a condition of general economic distress; (3) with respect to size, (a) does not exceed 10,000 square miles, (b) is located within not more than four contiguous counties, (c) consists of not more than three noncontiguous parcels, and (d) is located entirely within one State (unless located on one or more Indian reservations); and (4) a satisfactory course of action (described below) adopted by the State and local governments for the nominated area. In addition, a rural area is required to meet at least two of the following requirements: (1) an unemployment rate of at least 1.5 times the national unemployment rate; (2) poverty rates of at least 20 percent in each of 90 percent of the area's census tracts (or equivalent areas for nonmetropolitan areas); (3) a decline in employment (as measured by total wages) of more than five percent over the five-year period prior to the zone's designation; and (4) a decline in population of 10 percent or more over the period from 1980 to 1990.

Course of action

In order for a nominated area to be eligible for designation as a tax enterprise zone, the local government and State in which the area is located are required to agree in writing that they will adopt (or continue to follow) a specified course of action designed to rduce burdens borne by employers or employees in the area. A specified course of action may include one or more of the following actions with respect to a nominated area: (1) direct provision by the State or local government of property insurance to businesses that are unable to purchase comparable insurance coverage, or that are able to purchase such coverage only at a cost which is significantly

higher than the state-wide average cost of such coverage; (2) reduced tax rates or fees; (3) increased delivery of local public services; (4) actions to reduce government paperwork requirements; (5) involvement in the program by public or private entities (e.g., community groups), including a written commitment to provide jobs and job training, and technical, financial, or other assistance to employers, employees, and residents of the area; (6) special preferences given to minority contractors; (7) donations of surplus land to neighborhood organizations agreeing to operate businesses on the land; (8) programs to encourage employers to purchase health insurance for employees on a pooled basis; (9) programs to encourage local financial institutions to satisfy their obligations under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) by making loans to area businesses (with emphasis on start-up firms and certain other small businesses); and (10) special preferences for projects within the area in allocations of the State's low-income housing credit ceiling and private activity bonds ceiling.

Programs that serve as part of the required course of action undertaken by the State and local government may not be funded with proceeds from any Federal program (other than discretionary proceeds).[3] In evaluating courses of action agreed to by State and local governments, the Secretary of HUD (or, in the case of a rural development investment zone, the Secretary of Agriculture) is to take into account the past efforts of the State or local government in reducing the various burdens borne by employers and employees in the nominated area.[4]

Selection process and criteria

All designated tax enterprise zones are to be selected from nominated areas on the basis of the following criteria (each of which will be given equal weight): (1) the strength and quality of promised contributions by State and local governments in their course of action relative to their fiscal ability; (2) the effectiveness and enforceability of the guarantees that the promised course of action actually will be implemented; (3) the level of commitments (including expected future commitments) by private entities of additional resources to the economy of the nominated area, including the creation of new or expanded business activities; (4) the average ranking (relative to other nominated areas) with respect to (a) in the case of a nominated urban tax enterprise zone, the degree of poverty and unemployment, or (b) in the case of a nominated rural development investment zone, two of the following criteria that give the area a higher average ranking—poverty, unemployment, job loss, or population loss; and (5) the potential for revitalization of

[3] For this purpose, "discretionary proceeds" are funds such as community development block grants, the use of which is not restricted to a tax enterprise zone.

[4] The House bill provides that the required course of action may not include any action to assist any establishment in relocating from one area to another. However, this limitation is not to be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary if (1) the establishment of the new branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where the existing business entity conducts business operations, and (2) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

the nominated area (including the potential reduction in the incidence of crime and narcotics use and traffic), taking into account particularly the number of jobs to be created or retained.

Rules

Within four months after the date of enactment, the Secretary of HUD and the Secretary of Agriculture are required to promulgate rules (by notice or regulation) regarding: (1) procedures for nominating tax enterprise zones; (2) the method for comparing the enumerated selection criteria; and (3) recordkeeping requirements to assist in the preparation of studies to be submitted to Congress (described below).

Tax incentives

Employer wage credit

A 15-percent credit against income tax liability is available to all employers for the first $20,000 of wages paid or incurred by an employer for services performed by an employee while that employee both (1) resides in a tax enterprise zone (i.e., his or her principal place of abode is within a tax enterprise zone), and (2) performs substantially all employment services for the employer within the tax enterprise zone in a trade or business of the employer.

The wage credit is available with respect to a qualified employee who meets the two criteria above, regardless of the number of other employees who work for the employer or whether the employer meets the definition of an "enterprise zone business" (which applies for the other tax incentives described below).

Qualified wages include the first $20,000 of wages (generally defined as for FUTA purposes). Thus, the maximum credit per employee is $3,000 per year. Wages paid to a qualified employee continue to be eligible for the credit if the employee earns more than $20,000, although only the first $20,000 of wages are eligible for the credit.[5]

The credit is allowed with respect to full-time and part-time employees. However, if an employee is terminated less than one year after initial employment, the amount of credits previously claimed by the employer with respect to that employee generally is recaptured (unless the employee voluntarily leaves, becomes disabled, or is fired due to misconduct). In addition, wages are not eligible for the credit if attributable to services rendered by an employee during the first year he or she begins work for the employer if any portion of such wages is taken into account in determining the targeted jobs tax credit (TJTC) under present-law section 51.

Wages are not eligible for the credit if paid to certain relatives or dependents of the employer (described under present-law section 51(i)(1)) or, if the employer is a corporation, certain relatives of a person who owns more than 50 percent of the corporation. In addition, wages are not eligible for the credit if paid to a person who

[5] To prevent avoidance of the $20,000 limit, all employees of a controlled group of corporations (or partnerships or proprietorships under common control) are treated as employed by a single employer. In addition, special rules are provided to deal with changes of business ownership (or the form of business) of the employer.

owns more than five percent of the stock of the employer (or if the employer is not a corporation, more than five percent of the capital or profits interests in the employer).

The wage credit provided for by the House bill is not refundable, and an employer's deduction otherwise allowed for wages paid is reduced by the amount of the credit claimed for the taxable year. The credit is subject to the general business credit limitations of section 38 and, therefore, may not be used to reduce tentative minimum tax.[6]

The House bill further provides that each employer shall take reasonable steps to notify all employees whose wages qualify for the employer wage credit of their eligibility to receive advance refundability of the earned income tax credit (EITC).

Investment incentives

Definition of "enterprise zone business."—The House bill provides five investment incentives and special rules for redevelopment bonds that apply only with respect to trades or businesses that satisfy the definition of an "enterprise zone business." An enterprise zone business is defined as either a "qualified business entity" or a "qualified proprietorship."

A qualified business entity is defined as any corporation or partnership if for the taxable year: (1) every trade or business of the entity is the active conduct of a qualified business within a tax enterprise zone; (2) at least 80 percent of the total gross income of the entity is derived from the active conduct of such business; (3) substantially all of the use of the tangible property of the entity (whether owned or leased) occurs within a tax enterprise zone; (4) substantially all of the services performed for the entity by its employees are performed in a tax enterprise zone; (5) at least one-third of the employees of the entity are residents of a tax enterprise zone; (6) less than five percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property; [7] and (7) less than five percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to collectibles not held primarily for sale to customers in the ordinary course of such business.

A qualified proprietorship is defined as any qualified business that is carried on by an individual as a proprietorship if for the taxable year: (1) at least 80 percent of the total gross income of the individual from such business is derived from the active conduct of such business within a tax enterprise zone; (2) substantially all of the use of the tangible property in such business (whether owned or leased) occurs within a tax enterprise zone; (3) substantially all

[6] No portion of the unused business credit for any taxable year that is attributable to the employer wage credit may be carried back to a taxable year ending before the date of enactment of the bill.

[7] Nonqualified financial property is defined as debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property that is specified as nonqualified financial property in regulations to be issued by the Treasury Department. Nonqualified financial property, however, does not include (1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less; or (2) accounts or notes receivable that are acquired in the ordinary course of the qualified business for services rendered or from the sale of property held primarily for sale to customers of the qualified business.

of the services performed for such business by the employees of the business are performed in a tax enterprise zone; (4) at least one-third of such employees are residents of a tax enterprise zone; and (5) less than five percent of the average of the aggregate unadjusted bases of the property that is used in the business is attributable to (a) nonqualified financial property (as defined above), or (b) collectibles not held primarily for sale to customers in the ordinary course of such business.

A qualified business is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for license or sale. The rental of real property located in a tax enterprise zone to others is treated as a qualified business if and only if: (1) in the case of residential rental property (as defined in section 168(e)(2)), either (a) the property was originally placed in service after the designation of the area as a tax enterprise zone, or (b) the property is rehabilitated (as determined under the principles of section 42(e)(3)) after the designation of the area as a tax enterprise zone; or (2) in the case of real property that is not residential rental property, the lessee of the property is an enterprise zone business.

In addition, the rental of tangible personal property to others is treated as a qualified business if and only if substantially all of the rental of such property is by enterprise zone businesses or by residents of a tax enterprise zone.

Increased section 179 expensing.—The $10,000 expensing allowance under section 179 for certain depreciable business property is increased to $20,000 for an enterprise zone business. As under present law, the section 179 expensing allowance is phased out for taxpayers with qualifying investment in excess of $200,000 during any taxable year (i.e., the $20,000 amount is phased out for an enterprise zone business with investment during any taxable year between $200,000 and $220,000).

In the case of an enterprise zone business that is a component member of a controlled group of corporations, the $20,000 amount is to apply only if all components members of the group are enterprise zone businesses. In addition, if for any taxable year an individual elects the $10,000 section 179 expensing allowance with respect to property of a business that is not an enterprise zone business, then the $20,000 amount allowed such individual under section 179 with respect to property of an enterprise zone business is to be reduced by the amount taken into account under section 179 with respect to property of the business that is not an enterprise zone business. As under present law, the $20,000 expensing limitation is to apply at both the partnership and partner level.

The increased expensing allowance applies for purposes of the alternative minimum tax (i.e., it is not treated as an adjustment for purposes of the alternative minimum tax).

Capital gain exclusion.—In the case of an individual, an exclusion from gross income is provided for 50 percent of any long-term capital gain recognized on the sale or exchange of a "qualified zone

asset" held for more than five years.[8] The term "qualified zone asset" means the following property: (1) "qualified zone business property," meaning tangible property acquired by the taxpayer [9] after the date of zone designation, provided that the original use of such property in the tax enterprise zone commences with the taxpayer [10] and substantially all of the use of such property during substantially all of the taxpayer's holding period was in a tax enterprise zone and in an enterprise zone business of the taxpayer; (2) "qualified zone stock," meaning stock in a domestic corporation that, at the time of issuance [11] and during substantially all of the taxpayer's holding period, was an enterprise zone business, provided that such stock was acquired by the taxpayer on original issue from the corporation solely in exchange for cash [12]; and (3) "qualified zone partnership interests," meaning partnership interests acquired solely in exchange for cash in a partnership which, at the time such interest was acquired [13] and during substantially all of the taxpayer's holding period, was an enterprise zone business.

A special rule provides that, in the case of property that is "substantially renovated," such property need not be acquired by the taxpayer after the date of zone designation, nor need the original use of such property in the zone commence with the taxpayer. For purposes of this special rule, property is treated as "substantially renovated" if, during any 24-month period beginning after the date of zone designation, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of (1) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (2) $5,000. Thus, substantially renovated real estate located in a tax enterprise zone may constitute qualified zone business property. The House bill specifically provides, however, that "qualified zone business property" shall not include land which is not an integral part of an enterprise zone business.

In addition, the House bill treats as a qualified zone asset property which was a qualified zone asset in the hands of a prior owner, provided that at the time of acquisition, and during substantially all of the subsequent purchaser's holding period, the

---

[8] The 50-percent capital gains exclusion provision (and deferral provision discussed below) do not apply to any gain which would be treated as ordinary income under section 1250 if that section applied to all depreciation rather than the additional depreciation.

[9] The property must be acquired by the taxpayer by "purchase" within the meaning of present-law section 179(d)(2).

[10] Thus, used property may constitute "qualified zone business property" if the property has not been used in a tax enterprise zone prior to the taxpayer's use of the property within the zone.

[11] In the case of a new corporation, it is sufficient if the corporation is being organized for purposes of being an enterprise zone business.

[12] Qualified zone stock does not include any stock acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of the provisions. A similar rule also applies with respect to qualified zone partnership interests.

In addition, qualified zone stock for purposes of the capital gains exclusion and deferral provisions does not include any stock with respect to which the taxpayer elected to claim a deduction upon purchase (as described below).

[13] In the case of a new partnership, it is sufficient if the partnership is being organized for purposes of being an enterprise zone business.

property is used (or is an ownership interest) in an enterprise zone business.[14]

The House bill includes a 10-year safe-harbor, pursuant to which property that ceases to be a qualified zone asset because the property is no longer used in (or no longer represents an ownership interest in) an enterprise zone business after the 10-year period beginning on the date that the taxpayer acquired such property will continue to be treated as a qualified zone asset. Under this rule, the amount of gain eligible for the 50-percent exclusion is not to exceed the amount which would be qualified capital gain had the property been sold on the date of such cessation.

The House bill contains several special rules that apply to pass-thru entities, which are defined as partnerships, S corporations, regulated investment companies, and common trust funds. In the case of a sale or exchange of an interest in a pass-thru entity that was not an enterprise zone business during substantially all of the period that the taxpayer held the interest, the 50-percent capital gain exclusion is to apply to the extent that the gain is attributable to amounts that would have been long-term capital gain on qualified zone assets had the assets been sold for their fair market value on the date of the sale or exchange of the interest in the pass-thru entity. This rule is to apply only if the interest in the pass-thru entity was held by the taxpayer for more than five years. In addition, this rule is to apply only to qualified zone assets that were held by the pass-thru entity for more than five years and throughout the period that the taxpayer held the interest in the pass-thru entity.[15]

In addition, the 50-percent capital gain exclusion is to apply to any amount that is included in gross income by reason of holding an interest in a pass-thru entity that was not an enterprise zone business during substantially all of the period that the taxpayer held the interest if the amount is attributable to long-term capital gain recognized on the sale or exchange of a qualified zone asset held by the pass-thru entity for more than five years. This rule is to apply only to qualified zone assets that were acquired and disposed of by the pass-thru entity while the taxpayer held an interest in the pass-thru entity.[16]

The House bill also limits the amount of gain that qualifies for the 50-percent exclusion in the case of a sale or exchange of an interest in a partnership or stock in an S corporation that was an enterprise zone business during substantially all of the period that the taxpayer held such interest or stock. The gain that qualifies for the 50-percent exclusion is to be determined without regard to any land or intangible asset if such land or intangible asset was not used as an integral part of an enterprise zone business organized as a partnership or S corporation.

---

[14] The termination or revocation of a tax enterprise zone designation will not, by itself, result in property failing to be treated as a qualified zone investment. However, capital gain eligible for the 50-percent exclusion does not include any gain attributable to periods after the termination or revocation of a tax enterprise zone designation.

[15] The amount of gain to which this rule applies is also limited based on the interest of the taxpayer in the pass-thru entity on the date that the qualified zone asset was acquired.

[16] The amount of gain to which this rule applies is also limited based on the interest of the taxpayer in the pass-thru entity on the date that the qualified zone asset was acquired.

The House bill provides that in the case of a transfer of a qualified zone asset by gift, at death, or from a partnership to a partner that held an interest in the partnership at the time that the qualified zone asset was acquired, the transferee is to be treated (1) as having acquired the asset in the same manner as the transferor and (2) as having held the asset during any continuous period immediately preceding the transfer during which the asset was held (or treated under this provision as held) by the transferor.

Capital gain deferral.—At the election of an individual, long-term capital gain that is derived from the sale or exchange of any "qualified zone asset" (as defined above for purposes of the 50-percent capital gain exclusion provision) may be deferred if the proceeds of the sale or exchange are reinvested in another qualified zone asset. Gain is to be recognized only to the extent that (1) the amount realized from the sale or exchange, exceeds (2) the cost of any qualified zone asset that is purchased [17] directly by the individual during the six-month period beginning on the date of the sale or exchange (and that has not been previously taken into account under the provision). A qualified zone asset is not to include any timber, coal, or iron ore.

Capital gain that is eligible for the nonrecognition treatment includes long-term capital gain that is derived from the sale or exchange of a qualified zone asset to the extent attributable to: (1) in the case of stock or a partnership interest, the period during which the corporation or partnership was an enterprise zone business; or (2) in the case of any other qualified zone asset, the period during which substantially all of the use of the property was in an enterprise zone business. Eligible enterprise zone capital gain does not include any gain from any installment sale if such gain is taken into account under the installment method.

The basis of any qualified zone asset the purchase of which results in the nonrecognition of gain under this provision (defined as "qualified zone replacement asset") is reduced by the amount of gain that is not recognized by reason of the provision. In addition, if, at any time during the 10-year period beginning on the date that the qualified zone replacement asset was purchased by the taxpayer, the asset ceases to be a qualified zone asset, then the taxpayer is treated as disposing of such asset. The amount of gain taken into account with respect to such a deemed disposition is not to exceed the lesser of: (1) the amount of gain not recognized under the provision by reason of the purchase of such qualified zone replacement asset; or (2) the excess of the fair market value of the asset as of the first day of the taxable year in which the deemed disposition occurs over the adjusted basis of such asset as of such day.

The statute of limitations on the assessment of tax that is attributable to any gain to which an election under this provision applies is not to expire until three years after the date that the Internal Revenue Service is notified by the electing individual of either: (1) the individual's cost of purchasing any qualified zone replacement asset; (2) the individual's intention of not purchasing any qualified zone replacement asset; or (3) the individual's failure to

---

[17] The term "purchase" has the meaning given that term by section 179(d)(2).

purchase any qualified zone replacement asset within the six-month period following the sale or exchange to which the gain relates.

The elective deferral of capital gain applies to an individual's distributive share of eligible enterprise zone capital gain recognized by a partnership. In addition, the capital gain deferral applies for purposes of the alternative minimum tax.

Ordinary loss treatment for certain property.—Loss on any property that is a qualified zone asset (as defined above) at the time that the loss is sustained is treated as an ordinary loss to the extent that the loss is attributable to the period that the property was held by the taxpayer as a qualified zone asset.

The ordinary loss treatment applies only to qualified zone assets that satisfy a holding-period requirement. In the case of a qualified zone asset that is stock or a partnership interest, the taxpayer must have held the stock or partnership interest throughout the two-year period ending on the date that the loss is sustained. In case of a qualified zone asset that is tangible property, the property must have been held and used by the taxpayer in an enterprise zone business throughout the two-year period (or, in the case of real property,[18] five-year period) ending on the date that the loss is sustained.

Any loss that is treated as an ordinary loss under this provision is not to be taken into account in applying section 1231. In addition, any loss that is treated as an ordinary loss under this provision is to be treated as attributable to a trade or business of the taxpayer for purposes of the net operating loss deduction of section 172. Finally, the ordinary loss treatment is to apply for purposes of the alternative minimum tax.

Deduction for purchase of enterprise zone stock.—An individual is allowed an above-the-line deduction for the amount paid in cash during any taxable year to purchase "enterprise zone stock." The amount allowed as a deduction for any taxable year is limited to $25,000. If the amount paid during any taxable year for enterprise zone stock exceeds the $25,000 limitation, then the excess amount may be carried over and deducted in succeeding taxable years. The aggregate amount of the deductions allowed under the provision with respect to any individual may not exceed $250,000.[19]

"Enterprise zone stock" is defined as stock of a corporation if: (1) the stock is acquired on original issue from the corporation; (2) at the time of issue, the corporation is a qualified enterprise zone issuer; and (3) the amount of issue of which the stock is a part does not exceed the amount of the enterprise zone limit allocated to the issue (as described below). Stock of a corporation is to qualify as enterprise zone stock, however, only to the extent that the proceeds of such issuance are used by the issuer during the 12-month period following the issuance to purchase property (1) that is depreciable under section 168, (2) the original use of which within a tax enter-

[18] For this purpose, the term "real property" means any property which is section 1250 property (as defined in section 1250(c)).

[19] For purposes of the $25,000 annual limitation and the $250,000 lifetime limitation, an individual and all members of his or her family (as defined in section 267(c)(4)) are treated as a single individual.

prise zone commences with the issuer,[20] and (3) substantially all of the use of which is in a tax enterprise zone.

A qualified enterprise zone issuer is defined as any domestic C corporation if: (1) the corporation is an enterprise zone business, or, in the case of a newly formed corporation, the corporation is being organized for the purpose of being an enterprise zone business; (2) the corporation does not have more than one class of stock; (3) the sum of (a) the money, (b) the aggregate unadjusted bases of the property owned by the corporation, and (c) the value (as determined under Treasury regulations) of the assets leased to the corporation, does not exceed $5 million; [21] and (4) more than 20 percent of the total value and total voting power of the stock of the corporation is owned by individuals (directly or through partnerships or trusts) or by estates.

The amount of stock issued during any calendar year that may qualify as enterprise zone stock is limited to $30 million for each tax enterprise zone. As part of the tax enterprise zone nomination process, the State and local governments in which the tax enterprise zone is located are required to designate a local governmental official who is responsible for allocating the $30 million limit to stock issued during the calendar year by qualified enterprise zone issuers of the particular tax enterprise zone.

The basis of any enterprise zone stock is reduced by the amount of the deduction allowed with respect to the stock. Special recapture rules also apply to enterprise zone stock with respect to which a deduction was allowed. First, such stock (and any other property the basis of which is determined by reference to the adjusted basis of such stock) is treated as section 1245 property and the deduction allowed under this provision is treated as a depreciation deduction for purposes of applying section 1245. Consequently, the gain recognized upon the disposition of such stock generally is treated as ordinary income to the extent of the deduction allowed under this provision.

Second, if enterprise zone stock with respect to which a deduction was allowed under this provision (or any other property the basis of which is determined by reference to the adjusted basis of such stock) is disposed of within 5 years after the date that the stock was purchased by the taxpayer and section 1245 applies to such a disposition by reason of the first recapture rule, then the taxpayer is required to pay interest on the amount of tax that would have otherwise been due if a deduction had not been allowed for the purchase of the enterprise zone stock.

The recapture rules also apply if, during the 10-year period beginning on the date that the enterprise zone stock was purchased by the taxpayer, the issuer of the stock ceases to be a qualified enterprise zone issuer.[22] In such a case, the taxpayer is treated as

[20] Thus, a corporation may use the proceeds of the stock issuance to purchase or construct new property or to purchase property previously used outside the tax enterprise zone.

[21] This determination is to be made as of the date that the stock is issued and is to include any amount received by the corporation in exchange for the stock.

[22] The determination of whether an issuer of stock ceases to be a qualified enterprise zone issuer is to be made without regard to the requirement that the sum of (a) the money, (b) the aggregate unadjusted bases of the property owned by the corporation, and (c) the value (as determined under Treasury regulations) of the assets leased to the corporation does not exceed $5

Continued

disposing of the stock during the taxable year in which the cessation occurs at a price equal to the fair market value of the stock as of the first day of such taxable year.

The deduction for the purchase of enterprise zone stock is allowed to individuals who purchase such stock through a partnership or an S corporation. In such a case, the $25,000 annual limitation and the $250,000 lifetime limitation apply only at the partner or shareholder level. The deduction for the purchase of enterprise zone stock is not allowed to estates or trusts. Finally, the deduction for the purchase of enterprise zone stock is allowed for purposes of the alternative minimum tax.

Regulatory authority.—The Treasury Department is authorized to issue such regulations as may be necessary or appropriate to carry out the purposes of the enterprise zone tax incentives, including: (1) regulations that limit the tax benefits where the tax benefits in combination with benefits provided under other Federal programs would result in an activity being 100 percent or more subsidized by the Federal government; (2) regulations that prevent the abuse of the enterprise zone tax incentives; and (3) regulations that provide relief for inadvertent failures to qualify as an enterprise zone business.

Expansion of qualified redevelopment bond rules

Automatic qualification of tax enterprise zones

Qualified redevelopment bonds are tax-exempt private activity bonds, 95 percent or more of the net proceeds of which are used to finance redevelopment purposes in "designated blighted areas." Under present law, designated blighted areas are geographic areas designated by local governments pursuant to State authorizing legislation. The designation of these areas must be based on the substantial presence in the areas of factors such as excessive vacant land on which structures were previously located; abandoned or vacant buildings; substandard structures; vacancies; and delinquencies in the payment of real property taxes. Present law also restricts the maximum percentage of a jurisdiction that may be designated as blighted and includes both minimum and maximum sizes for each area, including special rules designed to facilitate use of these bonds in rural areas.

The House bill provides that a tax enterprise zone will qualify automatically as a designated blighted area eligible for qualified redevelopment bond financing during the first 60 months following the month of the designation of the zone. Thus, qualified redevelopment bonds may be issued to finance both present-law and newly expanded redevelopment purposes within these zones during this 60-month period, without the present-law necessity of a local designation as a blighted area pursuant to a State statute authorizing such designation.

---

million. In addition, a corporation is not treated as ceasing to satisfy the definition of a qualified enterprise zone issuer solely by reason of the termination or revocation of the tax enterprise zone designation.

Expansion of eligible redevelopment purposes

In general.—Redevelopment purposes eligible for bond-financing under present law are: (1) acquisition by a governmental unit of real property located in a designated blighted area, provided that the acquiring governmental unit has the power to exercise eminent domain with respect to the property; (2) clearing and preparation of the acquired real property for redevelopment; (3) rehabilitation of real property within a designated blighted area; and (4) relocation of occupants of structures on the real property acquired with bond proceeds.

In addition to the purposes eligible for qualified redevelopment bond financing under present law, the bill allows all or any portion of the proceeds of qualified redevelopment bonds issued for use in a tax enterprise zone during the 60-month period following its designation to be used to finance certain loans to enterprise zone businesses (as defined above) for property used in the business. The aggregate amount of loans (from all bond issues) may not exceed $2.5 million per business.[23]

Redevelopment purposes eligible for financing with these bond-financed loans to enterprise zone businesses are limited to: acquisition of land and other real property located in the tax enterprise zone; rehabilitation of existing land or other real property in the zone; construction of new depreciable real property in the zone; and, acquisition or construction of certain depreciable tangible personal property. All bond-financed property must be used in an enterprise zone business and substantially all of the use of the property must be in the tax enterprise zone for which the bonds are issued.

Qualified redevelopment bonds issued under this provision may not be used to make loans or otherwise finance property eligible under present law for financing with other categories of tax-exempt private activity bonds. For example, proceeds of these bonds may not be used to finance housing (rental or owner-occupied) or farmland because that property may be financed with the proceeds of exempt-facility bonds for qualified residential rental property, qualified mortgage and qualified veterans' mortgage bonds, or qualified small-issue bonds for first-time farmers, each of which presently targets the Congressionally intended beneficiaries of tax-exempt bonds for those purposes. However, for qualified redevelopment bonds issued under this provision, the bill waives the present-law restriction on financing retail food facilities (i.e., restaurants).

Additional qualifications

Loan origination.—The amount of bond proceeds to be used to make loans to enterprise zone businesses must be irrevocably designated by the issuer when the bonds are issued, and any designated proceeds that are not used to make qualified loans to enterprise zone businesses within 18 months after the bonds are issued must be used to redeem bonds (in the same manner as described below

---

[23] All persons or entities that are related parties under section 52 are treated as a single enterprise zone business in applying the $2.5 million limit.

on the rules restricting recycling of loan repayments). For purposes of this requirement, a loan is deemed made when funds are disbursed to the borrowing enterprise zone business that is to be the ultimate user of the proceeds.

Additional restriction on purpose arbitrage.—Notwithstanding their use to make loans to multiple parties, qualified redevelopment bonds issued under these rules will not be treated as "program" bonds under any Treasury Department arbitrage rules. Thus, permitted purpose arbitrage earnings on any issue of these bonds may not exceed 0.125 percentage points plus administrative costs allowable under Treasury regulations.

Further, to ensure the maximum interest rate subsidy to enterprise zone businesses receiving loans financed with these bonds, the bill provides that the effective rate of interest on bond-financed loans to the businesses may not exceed the yield on the issue by more than 0.125 percentage points. In determining the effective rate of interest on these loans, all points, fees, charges, and other amounts borne by the enterprise zone business are taken into account.[24]

Recycling not permitted.—All repayments of principal on loans financed with these bonds must be used to redeem bonds that are part of the issue no later than the close of the first semiannual period beginning after the date the repayment is received. The redemption requirement does not apply to require amounts of less than $250,000 to be used to redeem bonds, but those amounts (of unoriginated loan proceeds or repayments) are aggregated with future repayments in applying the requirement in subsequent semiannual periods.

Liberalization of bond security requirements

Notwithstanding any private payments made with respect to use of qualified redevelopment bond proceeds, present law requires the primary security for the bonds to be (a) taxes of general applicability imposed by a general purpose governmental unit, or (b) incremental property tax revenues which are reserved exclusively for debt service on the bonds.

The House bill expands the present-law rules requiring local governments to pledge tax revenues as primary security for repayment of qualified redevelopment bonds to allow two additional sources of local government security to be provided for bonds issued during the first 60 months after a zone's designation. First, general purpose governmental units in which tax enterprise zones are located may directly guarantee repayment of the bonds (e.g., by a pledge of their full faith and credit or through other loan guarantee programs funded and operated by them). Second, the governmental units may purchase a letter of credit or bond insurance as security for repayment of the bonds. To ensure that such a credit enhancement device provided under the second rule is a local government contribution to the tax enterprise zone, the bill provides that any public law or Treasury Department regulation otherwise allowing recovery of credit enhancement costs through arbitrage

---

[24] The House bill provides that credit report fees which do not exceed the fees charged generally for similar loans not financed with tax-exempt bonds may be excluded from this calculation.

earnings will not apply to the cost of these credit enhancement devices.

Penalty for failure to continue as zone business or to use bond-financed property in the zone business

Under present law, interest on loans financed with tax-exempt private activity bonds, including qualified redevelopment bonds, becomes nondeductible if certain changes in the use of bond-financed property occur (the "change-in-use rules"). If an enterprise zone business receiving a loan financed with qualified redevelopment bond proceeds ceases to qualify as such during any period when the financing is outstanding, or if less than substantially all [25] of the use of bond-financed property continues to be by the business in the tax enterprise zone, a prohibited change in use occurs under the tax-exempt bond rules.[26] Accordingly, interest on all loans to the nonqualifying business, or on loans to finance property that ceases to be used by the business in the tax enterprise zone, becomes nondeductible, effective from the first day of the taxable year in which the disqualification or cessation of use occurs.

Further, if less than substantially all of the use of bond-financed property continues to be in the tax enterprise zone or the borrower ceases to be an enterprise zone business at any time within 10 years after the financing is provided, a penalty of 1.25 percent of the face amount of *all* qualified redevelopment bond financing provided to the business removing the property is imposed. This penalty is in addition to the loss of interest deductions, described above.

The House bill provides that the change-in-use and 1.25-percent penalties are waived in the case of borrowers that cease to qualify as enterprise zone businesses or that cease to use bond-financed property in the zone in that business as a result of bankruptcy. It is intended that the Treasury Department may waive these penalties in the case of violations caused by circumstances beyond the control of the borrower if the violations are corrected within a reasonable period after the business has reason to know of them.

It is further intended that tax-exemption of the interest on qualified redevelopment bonds used to finance loans to enterprise zone businesses not be affected by events giving rise to loss of interest deductions or the 1.25 percent penalty, provided that the issuer of the bonds reasonably expects when loans are originated that (1) all property to be financed will continue to be used in the zone throughout its useful life (or the zone designation period, if shorter) and (2) each business to which loans are made will continue to qualify as a tax enterprise zone business throughout the designation period.

---

[25] The term "substantially all" is defined as under the other tax enterprise zone rules, which may not coincide with the pre-1986 or any current tax-exempt bond meaning for that term.

[26] Expiration of a zone designation period due solely to passage of time does not result in imposition of this change-in-use penalty.

Partial exemption from State volume limitations

Under present law, issuance of qualified redevelopment bonds, like most other tax-exempt private activity bonds, are subject to annual State private activity bond volume limitations. Qualified redevelopment bonds issued during the first 60 months after a tax enterprise zone's designation to finance zone redevelopment purposes are allowed a 50 percent exclusion from the otherwise applicable State private activity bond volume limitations.

Credit for contributions to certain community development corporations

The House bill also provides a credit for qualified cash contributions made to certain community development corporations (CDCs). If a taxpayer makes a qualified contribution, the credit may be claimed by the taxpayer for each taxable year during a 10-year period beginning with the taxable year during which the contribution was made. The credit that may be claimed for each year is equal to five percent of the amount of the contribution to the CDC. Thus, during the 10-year credit period, the taxpayer may claim aggregate credit amounts totalling 50 percent of the contribution.

For purposes of this provision, a qualified contribution is defined as any transfer of cash that meets the following requirements: (1) it is made to one of up to 10 CDCs selected by the Secretary of HUD, provided that the contribution is made during the five-year period after the CDC is so selected by the Secretary of HUD; (2) the amount is available for use by the CDC for at least 10 years; [27] (3) the contribution is to be used by the CDC to provide qualified low-income assistance [28] within its operational area; and (4) the CDC designates the contribution as eligible for the credit. The aggregate amount of contributions which may be designated by a selected CDC as eligible for the credit may not exceed $2 million.

Prior to January 1, 1994, the Secretary of HUD may select up to 10 CDCs as eligible to participate in the program (subject to the availability of eligible CDCs).[29] To be selected, a CDC must have the following characteristics: (1) it must be a tax-exempt charity described in section 501(c)(3) of the Code; (2) its principal purposes must include promoting employment and business opportunities for individuals who are residents of its operational area; and (3) its operational area must (a) meet the geographic limitations that would apply if the area were designated as a tax enterprise zone, (b) have an unemployment rate that is not less than the national

[27] The contribution to the CDC must be available for use by the CDC for up to a 10-year period, but need not meet the requirements of a "contribution or gift" for purposes of section 170. In other words, a contribution eligible for the credit under the bill may be made in the form of a 10-year loan (or other long-term investment), the principal of which is to be returned to the taxpayer after the 10-year period. However, in the case of a donation of cash made by a taxpayer to an eligible CDC, the taxpayer would be allowed to claim a charitable contribution deduction (subject to the present-law rules under section 170) and, in addition, could claim the credit under the bill's provisions.

[28] The House bill defines "qualified low-income assistance" as assistance (1) which is designed to provide employment and business opportunities to individuals who are residents of the operational area of the CDC, and (2) which is approved by the Secretary of HUD.

[29] At least four of the selected CDCs must operate in rural areas.

average, and (c) have a median family income which does not exceed 80 percent of the median family income of residents within the jurisdiction of the local government.[30]

The credit is subject to the general business credit limitations of section 38 and, therefore, may not be used to reduce tentative minimum tax.

Studies

The Secretary of the Treasury and the Comptroller General each are directed to submit an interim report by July 1, 1997, and a final report by July 1, 2002, to Congress analyzing the effectiveness of the tax enterprise zones.

Effective date

Under the House bill, tax enterprise zone designations may be made only during calendar years 1992 through 1996. The tax incentives provided for tax enterprise zones generally are available during the period that the designation remains in effect, which generally covers the 15-year period after the designation first becomes effective. The provisions that expand tax-exempt financing rules apply to bonds issued after the date of the bill's enactment and within 60 months after the designation of the tax enterprise zone in which the bond proceeds are to be used. For purposes of the qualified CDC contribution credit, the Secretary of HUD may select during calendar years 1992 and 1993 a total of 10 CDCs eligible to receive qualified contributions.

SENATE AMENDMENT

Designation of tax enterprise zones

In general

The Senate amendment provides that a total of 115 tax enterprise zones may be designated (subject to availability of eligible zones) during 1993 through 1996. Tax enterprise zones are urban tax enterprise zones or rural development investment zones, and are to be designated from areas nominated by State and local governments.

The Secretary of Housing and Urban Development (HUD) may designate 75 urban tax enterprise zones (up to 11 zones designated in 1993, 14 zones in 1994, 25 zones in 1995, and 25 zones in 1996).[31] Any shortfall in designations of zones may be carried forward to the following year, but not beyond 1996.

The Secretary of Agriculture (in consultation with the Secretary of the Interior) will designate 40 rural development investment zones (up to 8 zones designated in 1993, 8 zones in 1994, 12 zones in 1995, and 12 zones in 1996).[32] Any shortfall in designa-

[30] In selecting CDCs, the Secretary of HUD must give priority to corporations with a demonstrated record of performance in administering community development programs that target at least 75 percent of the jobs emanating from their investment funds to low income or unemployed individuals.

[31] At least 40 of the urban tax enterprise zones are to be located in cities with a population of less than 500,000.

[32] The Senate amendment also provides that no area within any Indian reservation may be designated as a tax enterprise zone. (Under the Senate amendment, certain tax incentives may apply to businesses located within Indian reservations. See infra.)

tions of zones may be carried forward to the following year, but not beyond 1996.

Zone designations generally will remain in effect for 10 years. An area's zone designation may be revoked if the local government or State significantly modifies the boundaries or does not comply with its agreed-upon course of action for the zone (described below).

Eligibility criteria for zones

The eligibility criteria for urban tax enterprise zones and rural development investment zones generally are the same as the House bill (except as noted below). To be eligible for designation as a tax enterprise zone, a nominated area is required to have all of the following characteristics: (1) a population of at least 20,000 (10,000 in the case of an urban zone in a city with a population of less than 500,000, and 5,000 in the case of a rural zone); (2) a condition of unemployment and general distress (indicated by factors such as high crime rates, or designation of the area as a disaster area or high-intensity drug trafficking area ("HIDTA") under the Anti-Drug Abuse Act of 1988); (3) is one contiguous area; (4) is located within not more than two States; (5) poverty rates of at least 25 percent in each of the area's census tracts; (6) poverty rates of at least 35 percent in each of at least 80 percent of the area's census tracts; and (7) a satisfactory course of action (described below) adopted by the State and local governments designed to promote economic development in the nominated area.

Course of action

In order for a nominated area to be eligible for designation as a tax enterprise zone, the local government and State in which the area is located are required to agree in writing that they will adopt (or continue to follow) a specified course of action designed to reduce burdens borne by employers or employees in the area.

A course of action must include the following actions with respect to a nominated area: (1) certification by the State insurance commissioner (or similar official) that basic commercial property insurance of a type comparable to that insurance generally in force in urban or rural areas (whichever is applicable) throughout the State is available to businesses within the nominated area; (2) a program to ensure the necessary rehabilitation of publicly owned property; (3) a commitment to increase the level, or efficiency of delivery, of local public services (such as public safety protection); (4) involvement in the program by public or private entities (e.g., community groups), including a commitment to provide jobs and job training, and technical, financial, or other assistance to employers, employees, and residents of the area; (5) special preferences granted to contractors owned and operated by socially and economically disadvantaged groups, in connection with activity in the zone; (6) certain programs to encourage local financial institutions to make loans to area businesses, with emphasis on small and locally owned businesses; and (7) special preferences for projects within the area in allocations of the State's low-income housing credit ceiling and private activity bonds ceiling.

In addition, the required course of action may include the following: (1) a reduction of tax rates or fees applying within the zone;

(2) donations of surplus land to community organizations agreeing to operate businesses on the land; and (3) programs to encourage employers to purchase health insurance for employees on a pooled basis.

Programs which serve as part of the required course of action may be implemented by both government and nongovernmental entities, but may not be funded with proceeds from any Federal program (other than discretionary proceeds, such as community development block grants, the use of which is not restricted to a zone). In evaluating courses of action agreed to by the State or local government, past efforts of those governments with respect to the nominated area are to be taken into account.

Selection process and criteria

All designated tax enterprise zones are to be selected from nominated areas on the basis of the following factors: (1) the strength and quality of promised contributions by State and local governments relative to their fiscal ability; (2) the effectiveness and enforceability of the guarantees that the promised course of action will be implemented, including the specificity with which the commitments enumerated in the course of action are described in order that it could be determined annually by the applicable Secretary whether such commitments actually are being carried out; (3) the level of commitments by private entities of additional resources to the economy of the nominated area, including the creation of new or expanded business activities; and (4) the relative levels (compared to other nominated areas) of unemployment, general distress, and poverty in the nominated area.

Tax incentives

Employer wage credit

A 30-percent credit against income tax liability is available to all employers for the first $15,000 of wages paid to each employee who (1) is a zone resident (i.e., his or her principal place of abode is within the zone), and (2) performs substantially all employment services within the zone in a trade or business of the employer.[33]

The maximum credit per qualified employee is $4,500 per year. Wages paid to a qualified employee continue to be eligible for the credit if the employee earns more than $15,000, although only the first $15,000 of wages are eligible for the credit. The wage credit is available with respect to a qualified employee, regardless of the number of other employees who work for the employer or whether the employer meets the definition of an "enterprise zone business" (which applies for the investment tax incentives described below).

Qualified wages include the first $15,000 of "wages," defined as (1) salary and wages as generally defined for FUTA purposes, and

[33] The credit is not available, however, with respect to any individual employed at any facility described in present-law section 144(c)(6)(B) (i.e., a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises). In addition, the credit is not available with respect to any individual employed by a trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of the aggregate unadjusted bases of assets of the farm exceed $500,000.

(2) certain training and educational expenses paid on behalf of a qualified employee, provided that (a) the expenses are paid to an unrelated third party and are excludable from gross income of the employee under present-law section 127, or (b) in the case of an employee under age 19, the expenses are incurred by the employer in operating a youth training program in conjunction with local education officials.

The credit is allowed with respect to both full-time and part-time employees. However, the employee must be employed by the employer for a minimum period of at least 90 days or 120 hours of service. Wages are not eligible for the credit if paid to certain relatives of the employer or, if the employer is a corporation, certain relatives of a person who owns more than 50 percent of the corporation. In addition, wages are not eligible for the credit if paid to a person who owns more than five percent of the stock (or capital or profits interests) of the employer.

To be eligible for the wage credit, an employer is required to notify all employees eligible to receive advance refundability of the earned income tax credit (EITC) of the availability of such advance refundability.

For certain small employers, the credit is refundable (and may be used to reduce tentative minimum tax). For this purpose, the term "small employers" is defined as employers with gross receipts not greater than $2 million during the preceding taxable year, although refundability is phased out for employers with gross receipts between $1 million and $2 million. For employers that are not "small employers," the credit is not refundable. For such employers, the credit is subject to the general business credit limitations (sec. 38) and, therefore, may not be used to reduce tentative minimum tax.

An employer's deduction otherwise allowed for wages is reduced by the amount of credit claimed for that taxable year.

Expansion of targeted jobs tax credit

The present-law targeted jobs tax credit (TJTC) is expanded so that a person who resides in a tax enterprise zone is treated as a member of a targeted group for purposes of that credit. However, the TJTC credit rate for tax enterprise zone residents is 30 percent (rather than the regular TJTC credit rate of 40 percent). Thus, employers located outside tax enterprise zones are entitled to claim the 30-percent TJTC credit on up to $6,000 of qualified first-year wages paid to employees who reside within a tax enterprise zone.[34]

As under present-law, an employer's deduction otherwise allowed for wages is reduced by the amount of TJTC claimed for that taxable year.

Definition of "enterprise zone business"

The investment tax incentives described below (but not the labor incentives described above) are available only with respect to trade or business activities that satisfy the criteria for an "enter-

[34] Employers located within a tax-enterprise zone are not allowed to claim the TJTC with respect to an employee if any of such employee's wages were taken into account in determining the employer's enterprise zone wage credit for that taxable year.

prise zone business." An "enterprise zone business" is defined as a corporation or partnership (or proprietorship) if for the taxable year: (1) every trade or business of the corporation or partnership is the active conduct of a qualified business within a tax enterprise zone [35]; (2) at least 80 percent of the total gross income is derived from the active conduct of a qualified business within a zone; (3) substantially all of the use of its tangible property occurs within a zone; (4) substantially all of its intangible property is used in, and exclusively related to, the active conduct of such business; (5) substantially all of the services performed by employees are performed within a zone; (6) at least one-third of the employees are residents of the zone; (7) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to certain financial property; and (8) less than five percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles not held primarily for sale to customers in the ordinary course of an active trade or business.

A "qualified business" is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license, a business consisting of the operation of a facility described in present-law section 144(c)(6)(B), and certain large farming operations if the aggregate unadjusted bases of the assets of the farm exceed $500,000. In addition, the leasing to others of any structure or building located within a tax enterprise zone is treated as a qualified business only if at least 50 percent of the gross rental income from the building or structure is derived from enterprise zone businesses. The rental of tangible personal property to others is not a qualified business unless substantially all of the rental of such property is by enterprise zone businesses or by residents of a tax enterprise zone.

Increased section 179 expensing

Certain enterprise zone businesses are allowed to expense 100 percent of the first $10,000 of investment in "qualified zone property." In addition, 50 percent of the next $40,000 of such investment also may be expensed.

"Qualified zone property" is defined as depreciable tangible property (including buildings), provided that: (1) such property was acquired by the taxpayer (but not from a related party) after the zone designation took effect; (2) the original use of the property in the zone commences with the taxpayer; and (3) substantially all of the use of the property is in the zone in the active conduct of a trade or business by the taxpayer in the zone. In the case of property which is substantially renovated by the taxpayer, however, such property need not be acquired by the taxpayer after zone designation nor originally used by the taxpayer within the zone if during any 24-month period after zone designation the additions to the taxpayer's basis in such property exceed 100 percent of the taxpayer's basis in such property at the beginning of the period or $5,000 (whichever is greater).

[35] This requirement does not apply to a business carried on by an individual as a proprietorship.

The expensing allowance is phased out for taxpayers with investment in depreciable business property during the taxable year totalling $200,000 to $250,000. As under present-law section 179, all component members of a controlled group are treated as one taxpayer for purposes of the expensing allowance and application of the phaseout (sec. 179(d)(6)). The increased expensing allowance is allowed for purposes of the alternative minimum tax (i.e., it is not treated as an adjustment for purposes of the alternative minimum tax). The expensing allowance is recaptured if the property is not used predominantly in an enterprise zone business (under rules similar to present-law section 179(d)(10)).

Accelerated depreciation

An enterprise zone business is to determine depreciation deductions with respect to "qualified zone property" [36] (defined above) by using the following recovery periods:

3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20 year property	12 years
Nonresidential real property	20 years

The shorter recovery periods allowed for qualified zone property of enterprise zone businesses are not allowed for alternative minimum tax purposes.

Ordinary loss treatment

Loss incurred by an individual or corporate taxpayer on disposition of certain property used in an enterprise zone business is treated as ordinary loss. The provision applies to tangible property used in an enterprise zone business for at least two years (five years in the case of real property). Loss on disposition of a stock or partnership interest in an enterprise zone business held by an individual for at least two years also is treated as ordinary loss. Ordinary loss treatment is not available under the provision for intangible property, other than stock or partnership interests in enterprise zone businesses.

Stock interests eligible for the ordinary loss treatment must be acquired by the individual taxpayer on original issue from the corporation solely in exchange for cash at a time when the corporation was an enterprise zone business (or was being organized for the purpose of being an enterprise zone business) and, during substantially all of the taxpayer's holding period, the corporation qualified as an enterprise zone business.[37] Similar rules would apply to an interest in a partnership that was an enterprise zone business. Property used in an enterprise zone business is eligible for the ordinary loss treatment if the property (1) meets the defini-

[36] Accelerated depreciation is available with respect to property that is not expensed under section 179.

[37] Under the Senate amendment, stock is not eligible for the ordinary loss treatment if the basis of such stock had been reduced under the stock expensing provision described below. In addition, stock is not eligible for the ordinary loss treatment if such stock was acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of the provision.

tion of "qualified zone property" (defined above), or (2) is land which is an integral part of an enterprise zone business.

The ordinary loss treatment applies only to losses that are attributable to the period that the property is used in an enterprise zone business. The ordinary loss treatment is to apply for purposes of computing alternative minimum tax.

Stock expensing

An individual is allowed a 50-percent deduction for the amount paid in cash during the taxable year to purchase certain stock in an enterprise zone business. The amount of the deduction is limited to $20,000 per year (with a $200,000 lifetime cap).[38] The deduction is allowed to an individual as an above-the-line deduction (regardless of whether the individual claims the standard deduction).

Stock qualifies for the expensing deduction only if it was acquired on original issue [39] from a domestic C corporation that: (1) meets the definition of an enterprise zone business; (2) does not have more than one class of stock outstanding; (3) the sum of (a) the unadjusted bases of the assets owned by the corporation and (b) the value of leased assets does not exceed $2 million; (4) more than 20 percent of the total value and total voting power of the stock of the corporation is owned by individuals (directly or through partnerships or trusts) or by estates; and (5) the cash paid for the stock is used by the issuing corporation within 12 months to acquire qualified zone property (as defined above).

For purposes of the $20,000 annual limitation and the $200,000 lifetime cap, an individual and members of his or her family are treated as a single individual.

The basis of stock for which a deduction is claimed under the provision is reduced by the amount of the deduction. In addition, gain on disposition of the stock is treated as ordinary income to the extent of the amount allowed as a deduction, and interest is payable on certain premature dispositions. The deduction is allowed for purposes of the alternative minimum tax.

Low-income housing credit expansion

For purposes of the low-income housing credit (LIHC), tax enterprise zones automatically qualify as "difficult to develop" areas, within which the eligible basis of buildings for purposes of computing the credit is 130 percent of the cost basis.

Qualified enterprise zone facility bonds

In general

The Senate amendment authorizes a new category of exempt-facility private activity bonds, qualified enterprise zone facility bonds, for use in areas certified as eligible to be enterprise zones. Qualified enterprise zone facility bonds are bonds 95 percent or

---

[38] Thus, in order for an individual to claim the maximum $20,000 per-year deduction, the individual must purchase $40,000 of qualified stock during the taxable year.

Individuals are permitted to carry excess amounts (above the $20,000 per year limit) to the next taxable year (subject to the $200,000 lifetime cap).

[39] Stock is not eligible for the expensing deduction if such stock was acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of the provision.

more of the net proceeds of which are used to finance qualified zone property (as generally defined under the amendment) for a qualified enterprise zone business [40] and land located in the zone the use of which is an integral part of such a business.

Unlike the other tax incentives provided for designated tax enterprise zones, these bonds may be issued for use in all areas that are *eligible* for designation as one of the 115 tax designated tax enterprise zones, regardless of whether the appropriate Secretary designates the area such. However, an area is eligible for use of these new exempt-facility bonds only if an application is made to the appropriate Secretary for such a designation and that Secretary certifies that the application demonstrates that the area meets the eligibility criteria enumerated above for designation (including the required course of action by the State and local governments).

Qualified enterprise zone facility bonds may be issued for use in an area only during the 60-month period following the earlier of (a) the date the zone is certified by the appropriate Secretary as an eligible area, or (b) the date on which the zone is designated a tax enterprise zone.

Prompt expenditure required

The proceeds of qualified enterprise zone facility bonds must be spent no later than 18 months after the date on which the bonds are issued. Tax-exemption on the bond interest will not be affected if this expenditure requirement is not satisfied, however, if (a) all unspent proceeds as of the end of the 18-month period are used to redeem bonds that are a part of the issue during the succeeding six months, and (b) the issuer pays a penalty equal to three percent per year of the unspent proceeds for the period beginning on the date the bonds are issued and ending on the date the unspent proceeds are used to redeem bonds.

Special rules on issue size and use to finance certain facilities

The aggregate face amount of a qualified enterprise zone bond issue may not exceed the excess of $1 million over all outstanding prior issues of such bonds with respect to any qualified enterprise zone business which is a principal user of the bond proceeds. For purposes of this determination, all businesses that are related parties, within the meaning of section 52(a) or (b) are treated as a single business.

The Senate amendment exempts qualified enterprise zone facility bonds from the general restrictions on financing the acquisition of existing property (sec. 147(d)). Additionally, these bonds may not be used to finance the acquisition of farmland, including such land for use by certain first-time farmers (sec. 147(c)(2)).

[40] For purposes of the tax-exempt bond provisions, the term qualified enterprise zone business includes a business located in a certified enterprise zone area (see below) that satisfies with respect to the certified area in which it is located all of the criteria applicable to such businesses that are located in designated tax enterprise zones.

Penalty for failure to continue as zone business or to use bond-financed property in the zone business

The Senate amendment extends change-in-use rules to qualified enterprise zone facility bonds. Accordingly, interest on all bond-financed loans to a business that no longer qualifies as an enterprise zone business, or on loans to finance property that ceases to be used by the business in the enterprise zone, becomes nondeductible, effective from the first day of the taxable year in which the disqualification or cessation of use occurs.

Further, if less than substantially all of the use of bond-financed property continues to be in the enterprise zone or the borrower ceases to be an enterprise zone business at any time within 10 years after the financing is provided, a penalty of 1.25 percent of the face amount of all qualified enterprise zone facility bond financing provided to the borrower is imposed. This penalty is in addition to the loss of interest deductions, described above.

The Senate amendment provides that the change-in-use and 1.25-percent penalties are waived in the case of borrowers that cease to qualify as enterprise zone businesses or that cease to use bond-financed property in the zone in that business as a result of bankruptcy, or solely as a result of a zone's ceasing to be eligible as such (e.g., as a result of the passage of time). Further, it is intended that the Treasury Department may waive these penalties in the case of violations caused by circumstances beyond the control of the borrower if the violations are corrected within a reasonable period after the business has reason to know of them.

Partial exemption from State volume limitations

Qualified enterprise zone facility bonds are allowed a 50-percent exclusion from the otherwise applicable State private activity bond volume limitations.

Exception from bank pro rata interest deduction disallowance

The Senate amendment provides that the general rule requiring banks to forego a portion of their otherwise allowable interest expense deduction if they invest in tax-exempt bonds does not apply to investments in qualified enterprise zone facility bonds, if the issuer elects.

Rules

Within four months after the date of enactment, the Secretaries of HUD, Agriculture, and Interior are required to promulgate rules (by notice or regulation) regarding: (1) procedures for nominating areas for designation as tax enterprise zones; (2) the method for comparing the enumerated selection criteria; and (3) recordkeeping requirements to assist in the preparation of studies to be submitted to Congress (described below). Such rules must provide that State and local governments shall have no less than five months after issuance to submit their applications for zone designation before such applications are evaluated and compared and any area is designated as a tax enterprise zone.

Study

The Senate amendment provides for a study to be conducted under the auspices of the National Academy of Sciences, analyzing the effectiveness of the tax incentives in the tax enterprise zones. An interim report of this study is required to be submitted to Congress by July 1, 1997, and a final report by July 1, 2000. The Secretary of the Treasury (in consultation with the Secretaries of Housing and Urban Development, Agriculture, and Interior) is directed to contract with the National Academy of Sciences within three months after the date of enactment to conduct this study.

Indian employment and investment incentives

In general

Under the Senate amendment, businesses located on Indian reservations generally are allowed a credit against income tax liability for certain investments (the "Indian reservation credit") and a credit against income tax liability for certain wages and health insurance costs (the "Indian employment credit").

Indian reservation credit

A credit against income tax liability is allowed for investments in certain property that is located or used within an Indian reservation which has a level of unemployment that is significantly greater than the national average. In general, the amount of the credit allowed a taxpayer for any taxable year equals the sum of: (1) 10 percent of the qualified investment in "reservation personal property" placed in service by the taxpayer during the taxable year; and (2) 15 percent of the qualified investment in "new reservation construction property" and "reservation infrastructure investment" placed in service by the taxpayer during the taxable year.

The full amount of the credit is allowed only if the Indian unemployment rate[41] on the applicable Indian reservation exceeds 300 percent of the national average unemployment rate at any time during the calendar year in which the property is placed in service or during either of the immediately preceding two calendar years.[42] If the Indian unemployment rate on the applicable Indian reservation exceeds 150 percent but does not exceed 300 percent of the national average unemployment rate at any time during the relevant calendar years, then only 50-percent of the otherwise allowable credit is allowed. If the Indian unemployment rate on the applicable Indian reservation does not exceed 150 percent of the national average unemployment rate at any time during the relevant calendar years, then no credit is allowed.

[41] The Indian unemployment rate is to be based on the number of Indians unemployed and able to work and is to be certified by the Secretary of the Interior.

[42] A special rule applies to qualifying property that has (or is a component of a project that has) an estimated construction period of more than two years or a cost of more than $1 million. With respect to such property, the relevant unemployment rate is the rate during the calendar year in which the taxpayer enters into a binding agreement to make a qualified investment (or, if earlier, the first calendar year in which the taxpayer has expended at least 10 percent of the qualified investment) or during the immediately preceding calendar year.

For purposes of the credit, "reservation personal property" is defined as property: (1) for which a depreciation deduction is allowable under section 168 of the Code; (2) which is not nonresidential real property, residential rental property, or any other real property with a class life of more than 12.5 years; (3) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; and (4) which is not used or located outside the Indian reservation on any regular basis.

In addition, "new reservation construction property" is defined as property: (1) which is nonresidential real property, residential rental property, or any other real property with a class life of more than 12.5 years; (2) which is located in an Indian reservation; (3) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; and (4) which is originally placed in service by the taxpayer.

Further, "reservation infrastructure investment" is defined as property: (1) for which a depreciation deduction is allowable under section 168 of the Code (whether real or personal property); (2) which benefits the tribal infrastructure; (3) which is available to the general public; and (4) which is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation. The term "reservation infrastructure investment" is to include otherwise qualifying property that is used or located outside an Indian reservation only if the purpose of the property is to connect to existing tribal infrastructure in the reservation (including, but not limited to, roads, power lines, water systems, railroad spurs, and communications facilities).

Notwithstanding the above definitions, property is not to qualify for the Indian reservation credit if the property is acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C) of the Code). In addition, property is not to qualify for the credit if the property (or any portion thereof) is placed in service for purposes of conducting or housing certain gaming activities.

In the case of reservation personal property and new reservation construction property, the qualified investment for purposes of determining the amount of the credit is the taxpayer's basis in the property. In the case of reservation infrastructure investment, the qualified investment for purposes of determining the amount of the credit is the amount expended by the taxpayer for the acquisition or construction of the property.

The basis of new reservation construction property is reduced by the full amount of the credit allowed with respect to the property. The basis of reservation personal property and reservation infrastructure investment is reduced by only 50 percent of the credit allowed with respect to the property. The Indian reservation credit is recaptured (i.e., the amount of tax due is increased) if the property with respect to which the taxpayer claimed the credit is disposed of by the taxpayer, or, in the case of reservation personal property, is removed from the Indian reservation, converted, or otherwise ceases to be reservation personal property with respect to the taxpayer.

Indian employment credit

A credit against income tax liability is also allowed to employers for certain wages and health insurance costs paid or incurred by the employer with respect to certain employees. In general, the amount of the credit allowed an employer for any taxable year equals 10 percent[43] of the sum of (1) the wages paid or incurred by the employer for services performed by an employee while the employee is a qualified employee ("qualified wages"); and (2) the amount paid or incurred by the employer for health insurance (other than health insurance provided pursuant to a salary reduction arrangement) to the extent that such amount is attributable to coverage provided to an employee while the employee is a qualified employee ("qualified employee health insurance costs").

The amount of the credit allowed an employer for any taxable year, however, is limited to an amount equal to the credit rate multiplied by the excess (if any) of (1) the sum of the qualified wages and qualified health insurance costs paid or incurred by the employer during the taxable year with respect to employees whose wages (which are paid or incurred by the employer) for such taxable year do not exceed the amount determined at an annual rate of $30,000 (as adjusted for inflation for years beginning after 1991), over (2) the sum of the qualified wages and qualified health insurance costs paid or incurred by the employer (or any predecessor) during the 1991 calendar year with respect to employees whose wages (which are paid or incurred by the employer or any predecessor) for such taxable year do not exceed the amount determined at an annual rate of $30,000.[44] For purposes of this limitation, all employees of a controlled group of corporations (or partnerships or proprietorships under common control) are treated as employed by a single employer.

In general, an individual is a qualified employee of an employer for any period only if: (1) the individual is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe;[45] (2) substantially all of the services performed during such period by the employee for such employer are performed within an Indian reservation; (3) the principal place of abode of the employee while performing such services is on or near the Indian reservation within which the services are performed; and (4) the employee began work for such employer on or after July 1, 1992.

An employee is not to be treated as a qualified employee for any period after the date that is 7 years after the day on which the employee first began work for the employer. In addition, an em-

[43] If at least 85 percent of the employees of the employer are Indian employees, then the amount of the credit for such taxable year is to be determined by using a 30-percent rate rather than the 10-percent rate.

[44] In the case of a short taxable year, the qualified wages and the qualified health insurance costs paid or incurred by the employer are to be annualized and the limitation for such taxable year is to equal the otherwise applicable limitation determined using such annualized amounts multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

[45] For this purpose, an Indian tribe is defined as any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et. seq.), as in effect on the date of enactment of the provision, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

ployee is not to be treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during such taxable year (whether or not for services rendered within the Indian reservation) exceeds an amount determined at an annual rate of $30,000 (as adjusted for inflation for years beginning after 1991). Further, an employee is to be treated as a qualified employee for a taxable year of the employer only if more than 50 percent of the wages paid by the employer to such employee during such taxable year are for services performed in a trade or business of the employer.

A qualified employee is not to include certain relatives or dependents of the employer (described under present-law section 51(i)(1)) or, if the employer is a corporation, certain relatives of a person who owns more than 50 percent of the corporation. In addition, a qualified employee is not to include any person who owns more than five percent of the stock of the employer (or if the employer is not a corporation, more than five percent of the capital or profits interests in the employer). Finally, a qualified employee is not to include any individual if the services performed by the individual for the employer involve certain gaming activities or are performed in a building housing such gaming activities.

The Indian employment credit is allowed with respect to full-time and part-time employees. However, if an employee is terminated less than one year after the date of initial employment, the amount of credits previously claimed by the employer with respect to that employee generally is recaptured (unless the employee voluntarily leaves, becomes disabled, or is fired due to misconduct).

The employment credit is not refundable and is subject to the general business credit limitations of section 38. Consequently, the credit may not be used to reduce tentative minimum tax.

Effective date

Under the Senate amendment, tax enterprise zone designations will be made only during calendar years 1993 through 1996. The tax incentives are available during the period that the designation remains in effect, which generally will be for 10 years after the designation first becomes effective.

The Indian reservation credit applies to property placed in service after December 31, 1992, and the Indian employment credit applies to wages paid or incurred after December 31, 1992.

CONFERENCE AGREEMENT

Tax enterprise zones

The conference agreement generally follows the House bill, with the following modifications.

The required course of action (which must be agreed to by the State and local governments nominating an area for designation as a tax enterprise zone) is modified to include as one of the possible components of such course of action that the State insurance commissioner (or similar State official) certifies that basic commercial property insurance of a type comparable to that insurance generally in force in urban or rural areas, whichever is applicable, throughout the State is available to businesses within the tax en-

terprise zone. In addition, the conference agreement clarifies that the course of action may include the giving of special preference to contractors owned and operated by members of any socially and economically disadvantaged group (within the meaning of section 8(a) of the Small Business Act (15 U.S.C. 637(a)), in connection with an activity any part of which occurs within the tax enterprise zone.

The conference agreement also clarifies that the "general distress" which is required for an area to be eligible for zone designation may be indicated by factors such as high crime rates, high vacancy rates, or designation of an area as a disaster area or high-intensity drug trafficking area ("HIDTA") under the Anti-Drug Abuse Act of 1988.

The selection criteria to be employed by the Secretary of HUD and the Secretary of Agriculture in designating tax enterprise zones from among nominated areas are clarified to include consideration of the specificity with which the commitments made by the State and local governments as part of the course of action are described, in order that the applicable Secretary will be better able to determine annually whether such commitments are, in fact, being carried out.

No enterprise zone may contain any part of an Indian reservation.[46] The conference agreement provides separate tax incentives for businesses operating in Indian reservations (as described below).

The tax incentives generally available under the conference agreement in tax enterprise zones (i.e., the wage credit and various capital incentives) are not available with respect to (1) any facility described in present-law section 144(c)(6)(B),[47] or (2) a trade or business the principal activity of which is farming, [48] but only if, as of the close of the taxable year, the sum of (a) the aggregate unadjusted bases (or, if greater, the fair market value) of assets owned by the taxpayer which are used in the farming business, and (b) the aggregate value of assets leased by the taxpayer for use in such business, exceeds $500,000.[49]

For purpcses of the employer wage credit, the conferees intend that employers will undertake reasonable measures to verify an employee's residence within the tax enterprise zone, so that the employer will be able to substantiate any wage credit claimed under the bill. It is further intended that the Treasury Department will issue regulations prescribing procedures to be followed for verification of an employee's residence.

The definition of an "enterprise zone business" is modified to include the requirement that substantially all of the intangible property of the entity (or the intangible property of the business in the case of an individual proprietorship) be used in, and exclusively

[46] The conference agreement deletes the requirement of the House bill that at least one rural development investment zone be located on an Indian reservation.

[47] Facilities described in section 144(c)(6)(B) include a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

[48] For this purpose, the term "farming" is defined under subparagraphs (A) or (B) of present-law section 2032A(e)(5).

[49] The conference agreement contains anti-abuse rules to prevent avoidance of the $500,000 limitation through the use of related entities.

related to, the active conduct of such business.[50] In addition, the conference agreement clarifies that, for purposes of determining whether a business carried on by an individual as a proprietorship qualifies as an enterprise zone business, the term "employee" includes the proprietor.

For purposes of the $20,000 section 179 expensing allowance for certain enterprise zone businesses, the requirement is deleted that all component members of a controlled group of corporations be enterprise zone businesses. Thus, although all component members of a controlled group need not be enterprise zone businesses, under present-law section 179(d)(6), component members of a controlled group are treated as one taxpayer for purposes of the $20,000 limitation and application of the $200,000 to $220,000 phase-out range.

An individual is allowed a 50-percent deduction for the amount paid in cash for the purchase of certain enterprise zone stock (as defined in the House bill). The deduction is limited to $25,000 per year, with a $250,000 lifetime cap. Thus, in order for an individual to claim the maximum $25,000 per-year deduction, the individual must purchase $50,000 of qualified enterprise zone stock during the taxable year. In addition, the conference agreement eliminates the $30 million limit contained in the House bill on the total amount of stock that, for each calendar year, is eligible for the deduction. The conference agreement also eliminates the requirement that a local government official be designated for each zone with responsibility for allocating the $30 million limit to particular stock issuances. Therefore, all stock which meets the definition of "enterprise zone stock" is eligible for the 50-percent deduction (if the individual purchaser so elects) during the life of a zone, subject to the purchaser's $25,000 annual deduction limit and $250,000 lifetime cap.[51]

The conference agreement clarifies that, for purposes of the 50-percent capital gains exclusion and capital gains deferral provisions, the term "enterprise zone business" does not include any trade or business of producing property of a character subject to the allowance for depletion under present-law section 611. The conference agreement also clarifies that the special rule contained in the House bill which defines "qualified zone business property" as including certain substantially renovated property applies to property which is substantially improved by the taxpayer and any land on which such property is located. Property shall be treated as "substantially improved" if, during any 24-month period beginning on the date on which the designation of the tax enterprise zone took effect, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of (i) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (ii) $5,000.

---

[50] This provision was included in the Senate amendment and parallels the rule governing tangible property contained in the House bill.

[51] The conference agreement provides that an individual, and such individual's spouse and minor children, are treated as one person for purposes of the $25,000 annual deduction limit and $250,000 lifetime cap.

The purchase of stock does not qualify for the 50-percent deduction if such stock was acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of the provision.

The conference agreement adopts the requirement from the House bill that the Secretaries of HUD and Agriculture must, within four months after enactment, issue rules establishing procedures for nominating areas for designation as tax enterprise zones, a method for comparing the enumerated selection criteria, and certain recordkeeping requirements. Such rules must also provide that States and local governments have at least 30 days after such rules are published to file applications for nominated areas before such applications are evaluated and compared with one another and any area is designated as a tax enterprise zone.

The conference agreement deletes the requirement that the Secretary of the Treasury and General Accounting Office (GAO) conduct a study of the tax enterprise zones, and, instead, provides for a study to be conducted under the auspices of the National Academy of Sciences, analyzing the effectiveness of the incentives provided for tax enterprise zones (and the other assistance provided by the bill for tax enterprise zones) in achieving the purposes of the legislation. An interim report of this study is required to be submitted to Congress by July 1, 1997, and a final report by July 1, 2002. The Secretary of the Treasury (in consultation with the Secretaries of HUD and Agriculture) is directed to contract with the National Academy of Sciences within three months after the date of enactment to conduct this study.

Indian employment and investment incentives

In general

The conference agreement generally follows the Senate amendment with respect to the tax benefits provided to businesses located on Indian reservations. Under the conference agreement, businesses located on Indian reservations [52] generally are allowed a credit against income tax liability for certain investments (the "Indian reservation credit") and a credit against income tax liability for certain wages and health insurance costs (the "Indian employment credit").

Indian reservation credit

A credit against income tax liability is allowed for investments in certain property that is located or used within an Indian reservation which has a level of unemployment that greatly exceeds the national average. In general, the amount of the credit allowed a taxpayer for any taxable year equals the sum of: (1) 10 percent of the qualified investment in "reservation personal property" placed in service by the taxpayer during the taxable year; and (2) 15 percent of the qualified investment in "new reservation construction property" and "reservation infrastructure investment" placed in service by the taxpayer during the taxable year.

[52] For purposes of the Indian employment and investment incentives, the term "Indian reservation" means a reservation as defined in (1) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), as in effect on the date of enactment of the provision, or (2) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), as in effect on the date of enactment of the provision.

The full amount of the credit is allowed only if the Indian unemployment rate [53] on the applicable Indian reservation exceeds 300 percent of the national average unemployment rate at any time during the calendar year in which the property is placed in service or during either of the immediately preceding two calendar years.[54] If the Indian unemployment rate on the applicable Indian reservation exceeds 150 percent but does not exceed 300 percent of the national average unemployment rate at any time during the relevant calendar years, then only half of the otherwise allowable credit may be claimed (i.e., the credit rates are 7.5 percent and 5 percent). If the Indian unemployment rate on the applicable Indian reservation does not exceed 150 percent of the national average unemployment rate at any time during the relevant calendar years, then no credit is allowed.

For purposes of the credit, "reservation personal property" is defined as property: (1) for which a depreciation deduction is allowable under section 168 of the Code; (2) which is not nonresidential real property, residential rental property, or any other real property with a class life of more than 12.5 years; (3) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; and (4) which is not used or located outside the Indian reservation on any regular basis.

In addition, "new reservation construction property" is defined as property: (1) which is nonresidential real property, residential rental property, or any other real property with a class life of more than 12.5 years for which a depreciation deduction is allowable under section 168 of the Code; (2) which is located in an Indian reservation; (3) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation;[55] and (4) which is originally placed in service by the taxpayer.

Further, "reservation infrastructure investment" is defined as property: (1) for which a depreciation deduction is allowable under section 168 of the Code (whether real or personal property); (2) which benefits the tribal infrastructure; (3) which is available to the general public; and (4) which is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation. The term "reservation infrastructure investment" is to include otherwise qualifying property that is used or located outside an Indian reservation only if the purpose of the property is to connect to existing tribal infrastructure in the reservation (including, but not limited to, roads, power lines, water systems, railroad spurs, and communications facilities).

---

[53] The Indian unemployment rate is to be based on the number of Indians unemployed and able to work and is to be certified by the Secretary of the Interior.

[54] A special rule applies to qualifying property that has (or is a component of a project that has) an estimated construction period of more than two years or a cost of more than $1 million. With respect to such property, the relevant unemployment rate is the rate during the calendar year in which the taxpayer enters into a binding agreement to make a qualified investment (or, if earlier, the first calendar year in which the taxpayer has expended at least 10 percent of the qualified investment) or during the immediately preceding calendar year.

[55] The active conduct of a trade or business for purposes of the Indian reservation credit is to include the rental to others of real property located in an Indian reservation. In addition, the credit for new reservation construction property is allowed with respect to otherwise qualifying property that is used to furnish lodging.

Notwithstanding the above definitions, property is not to qualify for the Indian reservation credit if the property is acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C) of the Code). In addition, property is not to qualify for the credit if the property (or any portion thereof) is placed in service for purposes of conducting or housing certain gaming activities.[56] Finally, property is not to qualify for the Indian reservation credit if the energy credit or the rehabilitation credit is allowed with respect to the property.

In the case of reservation personal property and new reservation construction property, the qualified investment for purposes of determining the amount of the credit is the taxpayer's basis in the property. In the case of reservation infrastructure investment, the qualified investment for purposes of determining the amount of the credit is the amount expended by the taxpayer for the acquisition or construction of the property. The at-risk rules of section 49 of the Code are also to apply in determining the amount of the qualified investment for purposes of the Indian reservation credit.

The basis of new reservation construction property is reduced by the full amount of the credit allowed with respect to the property. The basis of reservation personal property and reservation infrastructure investment is reduced by only 50 percent of the credit allowed with respect to the property. The Indian reservation credit is recaptured (i.e., the amount of tax due is increased) if, before the end of the applicable recovery period with respect to the property, the property is disposed of by the taxpayer, or, in the case of reservation personal property, is removed from the Indian reservation, converted, or otherwise ceases to be reservation personal property with respect to the taxpayer.

Indian employment credit

A credit against income tax liability is also allowed to employers for certain wages and health insurance costs paid or incurred by the employer with respect to certain employees. In general, the amount of the credit allowed an employer for any taxable year equals 10 percent [57] of the sum of (1) the wages paid or incurred by the employer for services performed by an employee while the employee is a qualified employee ("qualified wages"); [58] and (2) the amount paid or incurred by the employer for health insurance (other than health insurance provided pursuant to a salary reduction arrangement) to the extent that such amount is attributable to coverage provided to an employee while the employee is a qualified employee ("qualified employee health insurance costs").

---

[56] The limitation applies to class I, II, or III gaming as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703), as in effect on the date of enactment of the provision.

[57] If, for the entire taxable year of the employer, at least 85 percent of the employees of the employer are enrolled members of an Indian tribe or spouses of enrolled members of an Indian tribe, then the amount of the credit for such taxable year is to be determined by using a 30-percent rate rather than the 10-percent rate.

[58] Wages are not eligible for the credit if attributable to services rendered by an employee during the first year he or she begins work for the employer if any portion of such wages is taken into account in determining the targeted jobs tax credit (TJTC) under present-law section 51.

The amount of the credit allowed an employer for any taxable year, however, is limited to an amount equal to the credit rate multiplied by the excess (if any) of (1) the sum of the qualified wages and qualified health insurance costs paid or incurred by the employer during the taxable year with respect to employees whose wages (which are paid or incurred by the employer) for such taxable year do not exceed the amount determined at an annual rate of $30,000 (as adjusted for inflation for years beginning after 1992), over (2) the sum of the qualified wages and qualified health insurance costs paid or incurred by the employer (or any predecessor) during the 1992 calendar year with respect to employees whose wages (which are paid or incurred by the employer or any predecessor) for such taxable year do not exceed the amount determined at an annual rate of $30,000.[59] For purposes of this limitation, all employees of a controlled group of corporations (or partnerships or proprietorships under common control) are treated as employed by a single employer.

In general, an individual is a qualified employee of an employer for any period only if: (1) the individual is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe;[60] (2) substantially all of the services performed during such period by the employee for such employer are performed within an Indian reservation; (3) the principal place of abode of the employee while performing such services is on or near the Indian reservation within which the services are performed; and (4) the employee began work for such employer on or after January 1, 1993.

An employee is not to be treated as a qualified employee for any period after the date that is 7 years after the day on which the employee first began work for the employer. In addition, an employee is not to be treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during such taxable year (whether or not for services rendered within the Indian reservation) exceeds an amount determined at an annual rate of $30,000 (as adjusted for inflation for years beginning after 1992). Further, an employee is to be treated as a qualified employee for a taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer.

A qualified employee is not to include certain relatives or dependents of the employer (described under present-law section 51(i)(1)) or, if the employer is a corporation, certain relatives of a

[59] In the case of a short taxable year, the qualified wages and the qualified health insurance costs paid or incurred by the employer are to be annualized and the limitation for such taxable year is to equal the otherwise applicable limitation determined using such annualized amounts multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

[60] For this purpose, an Indian tribe is defined as any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et. seq.), as in effect on the date of enactment of the provision, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

person who owns more than 50 percent of the corporation. In addition, a qualified employee is not to include any person who owns more than five percent of the stock of the employer (or if the employer is not a corporation, more than five percent of the capital or profits interests in the employer). Finally, a qualified employee is not to include any individual if the services performed by the individual for the employer involve certain gaming activities or are performed in a building housing such gaming activities.[61]

The Indian employment credit is allowed with respect to full-time and part-time employees. However, if an employee is terminated less than one year after the date of initial employment, the amount of credits previously claimed by the employer with respect to that employee generally is recaptured (unless the employee voluntarily leaves, becomes disabled, or is fired due to misconduct).

An employer's deduction otherwise allowed for wages is reduced by the amount of the credit claimed for the taxable year. The conference agreement also provides that the employment credit is not refundable. Finally, the Indian employment credit is subject to the general business credit limitations of section 38,[62] and, therefore, the credit may not be used to reduce tentative minimum tax.

Effective date

The Indian reservation credit applies to property placed in service after December 31, 1992, and the Indian employment credit applies to wages paid or incurred after December 31, 1992.

II. ECONOMIC GROWTH INCENTIVES

A. Individual Retirement Arrangements (IRAs)

1. Modify IRA deduction

Present Law

Under present law, an individual that is not an active participant in an employer-sponsored retirement plan (and whose spouse also is not an active participant in such a plan) may make deductible contributions to an individual retirement arrangement (IRA) up to the lesser of $2,000 or 100 percent of compensation. The amounts held in an IRA, including earnings on contributions, generally are not included in taxable income until withdrawn.

If the individual (or the individual's spouse) is an active participant in an employer-sponsored retirement plan, the $2,000 deduction limit is phased out over certain adjusted gross income (AGI) levels. The limit is phased out between $40,000 and $50,000 for married taxpayers, and between $25,000 and $35,000 for single taxpayers. An individual may make nondeductible IRA contributions (up to the contribution limit) to the extent the individual is not permitted to make deductible IRA contributions.

---

[61] The limitation applies to class I, II, or III gaming as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703), as in effect on the date of enactment of the provision.

[62] No portion of the unused business credit for any taxable year that is attributable to the Indian employment credit may be carried back to a taxable year ending before the date of enactment of the provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases the income limits on IRA eligibility for active participants in employer-sponsored plans from $40,000 to $120,000 for married taxpayers and from $25,000 to $80,000 for single taxpayers. As under present law, the limits are phased out over $10,000 (so that, initially, active participants in employer-sponsored plans with AGI of $130,000 (married) and $90,000 (single) are ineligible). In addition, the active participant rule is modified so that a person is not considered to be an active participant because his or her spouse is an active participant in an employer-sponsored retirement plan. The income limits are indexed for inflation.

The IRA contribution limit is indexed in increments of $500. In addition, the limit on contributions (deductible and nondeductible) to IRAs is coordinated with the limit on elective deferrals to a qualified cash or deferred arrangement (sec. 401(k) plan), tax-sheltered annuity (sec. 403(b) annuity), simplified employee pension (SEP), or a section 501(c)(18) plan. Under the coordinated limit, IRA contributions cannot exceed the difference (if any) between the limit on elective deferrals and the amount in fact deferred. For purposes of the coordinated limit for IRA deductions and elective deferrals, the limit on elective deferrals to a section 403(b) tax-sheltered annuity is the limit described in section 402(g)(1), as modified under 402(g)(4) ($9,500 in 1992). For example, if the limit were in effect in 1992, a taxpayer who elected to defer $8,000 under a 401(k) plan could contribute only $728 to an IRA, since the limit on elective deferrals to a 401(k) plan is $8,728 in 1992. (A taxpayer who elected to defer $5,000 under a 401(k) plan could still only contribute $2,000 (indexed) to an IRA.)

Effective date.—The provision applies to taxable years beginning after December 31, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the following modifications.

The conference agreement increases the income limits on IRA eligibility for participants in employer-sponsored plans from $40,000 to $100,000 for married taxpayers and from $25,000 to $75,000 for single taxpayers. As under present law, the limits are phased out over $10,000 (so that, initially, participants in employer-sponsored plans with AGI of $110,000 (married) and $85,000 (single) are ineligible). The income limits are indexed for inflation in $20,000 increments.

Effective date.—The provision applies to taxable years beginning after December 31, 1994.

2. Special IRAs

Present Law

Under present law, certain individuals may make deductible contributions to an IRA up to the lesser of $2,000 or 100 percent of compensation. The amounts held in an IRA, including earnings on contributions, generally are not included in taxable income until withdrawn.

Withdrawals from an IRA (other than withdrawals of nondeductible contributions) are includible in gross income. In addition, amounts withdrawn prior to age 59½, death, or disability are subject to an additional 10-percent income tax, unless the withdrawals are in the form of substantially equal periodic payments over the life (or life expectancy) of the IRA owner or over the joint lives (or life expectancies) of the IRA owner and his or her beneficiary.

House Bill

No provision.

Senate Amendment

The Senate amendment permits individuals to establish and maintain new "special IRAs" to which they can make nondeductible contributions. The same eligibility income limits that apply to deductible IRAs also apply to special IRAs. Withdrawals from a special IRA are not includible in income if attributable to contributions that have been held in the special IRA for at least 5 years. The limits on contributions to deductible IRAs and special IRAs are coordinated.

The Senate amendment also permits an individual whose AGI for the taxable year does not exceed the lower end of the income eligibility limits (initially, $80,000 for singles and $120,000 for marrieds) to make transfers from deductible IRAs to special IRAs without imposition of the 10-percent tax on early withdrawals. These limits apply whether or not the individual or his or her spouse are active participants in an employer-sponsored retirement plan. The amount transferred to a special IRA generally is includible in income in the year withdrawn from the deductible IRA. However, in the case of a transfer before January 1, 1994, the transferred amount is includible in income ratably over the 4-taxable year period beginning in the taxable year in which the distribution was made.

Effective date.—The provision generally applies to taxable years beginning after December 31, 1993. However, the provision permitting transfers from deductible IRAs to special IRAs is effective for taxable years beginning after December 31, 1992. Thus, special IRAs can be established and maintained in taxable years beginning before January 1, 1994, only with funds transferred from a deductible IRA.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications.

The conference agreement provides that the same eligibility income limits that apply to deductible IRAs also apply to special IRAs. Thus, initially, the income limits on special IRA eligibility for participants in employer-sponsored plans are $100,000 for married taxpayers and $75,000 for single taxpayers (phased out over $10,000 dollars).

The conference agreement permits individuals whose AGI for the taxable year does not exceed the upper end of the new income eligibility limits (initially, $85,000 for single taxpayers and $110,000 for married taxpayers) to make transfers from deductible IRAs to special IRAs without imposition of the 10-percent tax on early withdrawals. These limits apply whether or not the individual or his or her spouse are active participants in an employer-sponsored retirement plan. The AGI limits do not apply to transfers from one special IRA to another special IRA.

The conference agreement also clarifies that a direct trustee-to-trustee transfer from one special IRA to another will not be treated as a distribution, consistent with the treatment of a direct trustee-to-trustee transfer from one deductible IRA to another (see Rev. Rul. 78-406).

Effective date.—Same as the Senate amendment. The new eligibility income limits, and the coordinated limit on IRA contributions and elective deferrals, apply to special IRAs beginning in 1994. Transfers from deductible IRAs to special IRAs are subject to the income limits applicable to such transfers beginning in 1993.

3. Penalty-free distributions

PRESENT LAW

Under present law, withdrawals from an IRA (other than withdrawals of nondeductible contributions) are includible in gross income. In addition, amounts withdrawn prior to age 59-½, death, or disability are subject to an additional 10-percent income tax, unless the withdrawals are in the form of substantially equal periodic payments over the life (or life expectancy) of the IRA owner or over the joint lives (or life expectancies) of the IRA owner and his or her beneficiary. The 10-percent additional tax also applies to early withdrawals from tax-qualified retirement plans and tax-sheltered annuities.

There is an exception to the additional 10-percent income tax on early withdrawals for distributions from a tax-qualified retirement plan or tax-sheltered annuity that do not exceed the amount allowable as a deduction for medical care for the year. This exception does not apply to IRAs.

HOUSE BILL

No provision.

SENATE AMENDMENT

First-time home purchasers

The Senate amendment allows withdrawals from an IRA and from amounts attributable to elective deferrals under (1) a cash or

deferred arrangement (sec. 401(k) plan), (2) a tax-sheltered annuity (sec. 403(b) annuity), or (3) a section 501(c)(18) plan without imposition of the 10-percent additional income tax on early withdrawals (and without disqualification of the 401(k) plan or 403(b) annuity) to the extent the amount withdrawn is used to pay qualified acquisition, construction, or reconstruction costs with respect to a principal residence of a first-time homebuyer who is the taxpayer, the taxpayer's spouse, or the taxpayer's child or grandchild.

A first-time homebuyer is any individual (and if married, such individual's spouse) who (1) did not own an interest in a principal residence during the 3 years prior to the purchase of a home and (2) is not in an extended period for rolling over gain from the sale of a principal residence. In the case of certain homebuyers described in Code sec. 143(i)(1)(C) whose family incomes do not exceed $15,000, ownership of land subject to certain contracts for deed described in such section does not disqualify the homebuyer from being considered a first-time homebuyer. In addition, an individual whose principal residence was destroyed or substantially damaged by Hurricane Andrew, Hurricane Iniki, or Typhoon Omar is treated as a first-time homebuyer if the individual rebuilds it or acquires another home to replace it.

Education expenses

The Senate amendment allows withdrawals from an IRA and from amounts attributable to elective deferrals under (1) a cash or deferred arrangement (sec. 401(k) plan), (2) a tax-sheltered annuity (sec. 403(b) annuity), or (3) a section 501(c)(18) plan without imposition of the 10-percent additional income tax on early withdrawals to the extent the amount withdrawn is used to pay qualified higher education expenses of the taxpayer, or the taxpayer's spouse, children or grandchildren.

Medical expenses

The Senate amendment extends to IRAs the present-law exception to the early withdrawal tax for distributions from tax-qualified plans and tax-sheltered annuities for certain medical expenses and expands the exception (as applied both to IRAs and other plans) to apply to medical expenses of the taxpayer's child, grandchild, or ancestor whether or not such person otherwise qualifies as the taxpayer's dependent.

Long-term unemployment

The Senate amendment provides that the 10-percent early withdrawal tax does not apply to withdrawals from IRAs made by an individual after separation from employment if (1) the individual has received unemployment compensation for 12 consecutive weeks and (2) the withdrawal is made during the taxable year during which the unemployment compensation is received or the succeeding taxable year.

American-made automobiles

The Senate amendment exempts withdrawals during 1992 and 1993 from an IRA and from amounts attributable to elective deferrals under (1) a cash or deferred arrangement (sec. 401(k) plan), (2)

a tax-sheltered annuity (sec. 403(b) annuity), or (3) a section 501(c)(18) plan from the 10-percent additional income tax on early withdrawals to the extent the amount withdrawn is used to purchase a new American-made automobile.

5-year holding period

The Senate amendment provides that the present-law rule permitting penalty-free IRA withdrawals after an individual reaches 59-½ does not apply in the case of amounts attributable to contributions made during the previous 5 years. The provision does not apply to amounts rolled over from tax-qualified plans or tax-sheltered annuities. For purposes of applying the rule, distributions are treated as having been made first from the earliest contributions (and earnings) remaining in the account, and then from other contributions in the order in which made.

Effective dates

The provisions generally are effective for withdrawals after December 31, 1992. The provision requiring a 5-year holding period to avoid withdrawal penalties for distributions from IRAs after age 59-½ applies to contributions (and earnings allocable thereto) made after December 31, 1993.

CONFERENCE AGREEMENT

First-time home purchasers

The conference agreement follows the Senate amendment.

Education expenses

The conference agreement follows the Senate amendment.

Medical expenses

The conference agreement follows the Senate amendment.

Long-term unemployment

The conference agreement follows the Senate amendment.

American-made automobiles

The conference agreement does not include the provision in the Senate amendment.

5-year holding period

The conference agreement follows the Senate amendment.

Effective dates

The conference agreement follows the Senate amendment.

B. Extension of Certain Expiring Tax Provisions

1. *Extension of exclusion for employer-provided educational assistance*

Prior Law

An employee's gross income and wages for income and employment tax purposes did not include amounts paid or incurred by the employer for education assistance provided to the employee if such amounts are paid or incurred pursuant to an educational assistance program that meets certain requirements. This exclusion, which expired with respect to amounts paid after June 30, 1992, was limited to $5,250 of educational assistance with respect to an individual during a calendar year.

In the absence of this exclusion, an employee generally would be required to include in income and wages, for income and employment tax purposes, the value of educational assistance provided by an employer to the employee, unless the cost of such assistance qualified as a deductible job-related expense of the employee.

House Bill

The exclusion for employer-provided educational assistance is extended from July 1, 1992, through December 31, 1993.

Effective date.—The provision is effective for taxable years ending after June 30, 1992.

Senate Amendment

The exclusion for employer-provided educational assistance is extended from July 1, 1992, through September 30, 1993. The exclusion is available with respect to amounts paid by the employer before October 1, 1993.

Effective date.—The provision is effective for taxable years ending after June 30, 1992.

Conference Agreement

The conference agreement extends the exclusion for employer-provided education assistance for one year, through June 30, 1993. For years beginning in 1993, only payments by the employer before July 1, 1993, are taken into account.

Effective date.—The provision is effective for taxable years ending after June 30, 1992.

2. *Exclusion for employer-provided group legal services and tax exemption for group legal services organizations*

Prior Law

Certain amounts contributed by an employer to and benefits provided under a qualified group legal services plan were excluded from an employee's gross income for income and employment tax purposes. The exclusion was limited to an annual premium value of $70. The exclusion expired June 30, 1992.

Prior law provided tax-exempt status for an organization the exclusive function of which is to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan. The tax exemption for such an organization expired June 30, 1992.

HOUSE BILL

The House bill extends the exclusion from income for employer-provided group legal services and the tax exemption for group legal services organizations through December 31, 1993.

Effective date.—Taxable years beginning after June 30, 1992.

SENATE AMENDMENT

The Senate amendment extends the exclusion from income for employer-provided group legal services and the tax exemption for group legal services organizations through September 30, 1993.

In the case of a taxable year beginning in 1993, only amounts paid before October 1, 1993, for coverage for periods before October 1, 1993, shall be taken into account in determining the amount excluded.

Effective date.—Taxable years beginning after June 30, 1992.

CONFERENCE AGREEMENT

The conference agreement does not extend the exclusion for employer-provided group legal services or the exemption for group legal services organizations.

3. Extend health insurance deduction for self-employed individuals

PRIOR LAW

Prior law provided a deduction for 25 percent of the amount paid for health insurance for a self-employed individual (e.g., a partner in a partnership or a sole proprietor) and the individual's spouse and dependents. The 25-percent deduction was also available to more than 2-percent shareholders of S corporations. The amount of expenses in excess of the deductible amount could be taken into account in determining whether the individual is entitled to a medical expense deduction (sec. 213).

The 25-percent deduction expired for taxable years beginning after June 30, 1992. In the case of years beginning in 1992, only amounts paid before July 1, 1992, for coverage before July 1, 1992, may be taken into account in determining the amount of the deduction.

HOUSE BILL

The House bill extends the 25-percent deduction from July 1, 1992, through December 31, 1992.

Effective date.—The provision is effective for taxable years ending after June 30, 1992.

Senate Amendment

The Senate amendment extends the 25-percent deduction from July 1, 1992, through December 31, 1993. After that, the Senate amendment increases the deduction to 100 percent, and extends it through May 15, 1994. The deduction expires after May 15, 1994.

Effective date.—The provision is effective for taxable years ending after June 30, 1992.

Conference Agreement

The conference agreement extends the 25-percent deduction for 12 months, through June 30, 1993. In the case of years beginning in 1993, only amounts paid before July 1, 1993, for coverage before July 1, 1993, may be taken into account in determining the amount of the deduction.

Effective date.—The provision is effective for taxable years ending after June 30, 1992.

4. *Qualified mortgage bonds and mortgage credit certificates*

Present Law

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied residences located within the jurisdiction of the issuer of the bonds. Persons receiving QMB loans must satisfy principal residence, purchase price, borrower income, first-time homebuyer, and other requirements. An exception is provided for qualified home improvement loans (not in excess of $15,000) from the first-time homebuyer requirement. Part or all of the interest subsidy provided by QMBs is recaptured if the borrower experiences substantial increases in income and disposes of the subsidized residence within nine years after it was purchased.

The volume of QMBs that a State may issue is limited by an annual State private activity bond volume limit.

Mortgage credit certificates

Qualified governmental units may elect to exchange private activity bond volume authority for authority to issue mortgage credit certificates ("MCCs"). MCCs entitle home buyers to nonrefundable income tax credits for a specified percentage of the interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the loan remains outstanding and the residence being financed continues to be the MCC-recipient's principal residence. MCCs are subject to the same targeting requirements as QMBs. MCCs also are subject to the same recapture rules as QMBs.

Expiration

Authority to issue QMBs and to elect to trade in private activity bond volume authority to issue MCCs expired after June 30, 1992.

HOUSE BILL

Extension

The House bill permanently extends the authority to issue QMBs and to elect to trade in bond volume authority to issue MCCs.

Effective date.—The extension of the QMB and MCC programs is effective for bonds issued after June 30, 1992.

Housing affordability programs

The House bill also clarifies the treatment of certain housing affordability programs. Specifically, it provides that, in high housing cost areas, the fact that an issuer of QMBs or MCCs also provides certain second mortgage loans to homebuyers in conjunction with QMB or MCC financing will not preclude availability of the QMB- or MCC-assistance on the purchase of a residence.

Effective date.—The provision relating to the treatment of certain housing affordability programs applies to QMB and MCC financing provided after the date of enactment.

Contracts for deed

The House bill also provides that, in the case of certain homebuyers whose family incomes do not exceed fifty percent of applicable median family income, ownership of land subject to certain contracts for deed does not violate the requirement that QMB- and MCC-financed homebuyers be first-time homebuyers and that the financing provided be for new mortgages. Thus, QMB-financed loans may be made (and MCCs to be granted) to individuals who own and maintain their principal residence on land subject to these contracts for deed provided that the homebuyers satisfy (1) all requirements of the QMB and MCC programs but for the otherwise applicable contract for deed and (2) the special income limit. These loans may be used to repay the contract for deed and to finance a new residence on the land.

Effective date.—The provision relating to certain contracts for deed applies to QMB and MCC financing provided after the date of enactment.

Natural disaster areas

No provision.

SENATE AMENDMENT

Extension

The Senate amendment extends the authority to issue QMBs and to elect to trade in bond volume authority to issue MCCs for 15 months (through September 30, 1993).

Effective date.—Same as the House bill.

Housing affordability programs

No provision.

Contracts for deed

The Senate amendment is the same as the House bill except that: (1) the holders are not required to live on the land currently, and (2) the income limit is $15,000 indexed for inflation after 1992.

Effective date.—Same as the House bill.

Natural disaster areas

For damaged residences affected by Hurricane Andrew, Hurricane Iniki and Typhoon Omar, the $15,000 limitation for qualified home improvement loans is waived.

Effective date.—Same as the House bill.

CONFERENCE AGREEMENT

Extension

The conference agreement follows the House bill.

Housing affordability programs

The conference agreement follows the House bill.

Contracts for deed

The conference agreement follows the Senate amendment.

Natural disaster areas

The conference agreement follows the Senate amendment.

5. Qualified small-issue bonds

PRESENT LAW

Interest on small issues of private activity bonds issued by States or local governments ("qualified small-issue bonds") is excluded from gross income if certain conditions are met. First, at least 95 percent of the bond proceeds must be used to finance manufacturing facilities or certain agricultural land or equipment. Second, the bond issue must have an aggregate face amount of $1 million or less, or alternatively the aggregate face amount of the issues, together with the aggregate amount of certain related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, must not exceed $10 million.

Issuance of qualified small-issue bonds, like most other private activity bonds, is subject to annual State volume limitations and to other rules.

Authority to issue qualified small-issue bonds expired after June 30, 1992.

HOUSE BILL

Extension

The House bill permanently extends the authority to issue qualified small-issue bonds.

Effective date.—The provision is effective for bonds issued after June 30, 1992.

Capitalization

No provision.

SENATE AMENDMENT

Extension

The Senate amendment extends the authority to issue qualified small-issue bonds for 15 months (through September 30, 1993).

Effective date.—The extension is effective for bonds issued after June 30, 1992.

Capitalization

The Senate amendment increases allowable aggregate capitalization from $10 million to $20 million; however, all capital expenditures in excess of the present-law $10 million maximum may not be financed directly or indirectly with the proceeds of tax-exempt bonds.

Effective date.—The provision relating to aggregate capitalization is effective for capital expenditures after the date of enactment.

CONFERENCE AGREEMENT

Extension

The conference agreement follows the Senate amendment (i.e., extends authority to issue these bonds for 15 months, from June 30, 1992 until September 30, 1993).

Capitalization

The conference agreement follows the Senate amendment.

6. Research and experimentation tax credit

PRESENT LAW

The research tax credit provides a 20-percent credit to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit expired after June 30, 1992.

The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (such as "start-up" firms) are assigned a fixed-base percentage of .03.

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Qualified research expenditures eligible for the credit consist of: (1) "in-house" expenses of the taxpayer for research wages and supplies used in research; (2) certain time-sharing costs for comput-

er use in research; and (3) 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf. Expenditures attributable to research that is conducted outside the United States do not enter into the credit computation. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

In addition, the 20-percent tax credit also applies to the *excess* of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for university basic research *over* (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation.

Deductions for qualified research expenditures allowed to a taxpayer under section 174 are reduced by an amount equal to 100 percent of the taxpayer's research credit determined for that year.

House Bill

The House bill extends the research tax credit for 18 months (i.e., for qualified research expenditures and university basic research expenditures incurred through December 31, 1993).

In extending the research tax credit, the committee report to the House bill states that it wishes to reaffirm Congressional intent that neither the enactment of the credit in 1981 nor the "targeting" modifications to the credit in 1986 affect the definition of "research or experimental expenditures" for purposes of section 174. Thus, the various new credit limitations enacted in the Tax Reform Act of 1986 (such as the "process of experimentation" requirement) apply in determining eligibility for the credit (in taxable years beginning after December 31, 1985), and do not determine eligibility of product development costs under section 174.

Effective date.—The provision applies to qualified expenditures incurred during the period July 1, 1992, through December 31, 1993.

Senate Amendment

The Senate amendment extends the research tax credit for 15 months (i.e., for qualified research expenditures and university basic research expenditures incurred through September 30, 1993).

The Senate amendment also provides that, if the first taxable year for a taxpayer in which it had both gross receipts and qualified research expenditures began after 1983, then the taxpayer will be treated as a start-up firm with a fixed based percentage of .03.

Effective date.—The provision applies to qualified expenditures incurred during the period July 1, 1992, through September 30, 1993. The amendment to the start-up firm rules is effective for taxable years beginning after September 30, 1992.

CONFERENCE AGREEMENT

The conference agreement extends the research credit for 12 months (i.e., for qualified research expenditures and university basic research expenditures incurred during the period July 1, 1992, through June 30, 1993).

The conference agreement includes the modification to the start-up firm rules contained in the Senate Amendment. In addition, the conferees adopt the language from the House bill committee report regarding the effect on section 174 of the enactment of the research credit in 1981 and the targeting modifications to the credit in 1986.

Effective date.—The provision applies to qualified expenditures incurred during the period July 1, 1992, through June 30, 1993. The amendment to the start-up firm rules is effective for taxable years beginning after September 30, 1992.

7. Extension of the low-income housing tax credit

a. Extension of credit

PRESENT LAW

A tax credit is allowed in annual installments over ten years for qualifying newly constructed or substantially rehabilitated low-income rental housing. The credit expired after June 30, 1992.

HOUSE BILL

The House bill permanently extends the low-income housing credit.

SENATE AMENDMENT

The Senate amendment extends the credit for 15 months (through September 30, 1993).

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

b. Maximum rent

PRESENT LAW

The maximum rent that may be charged a family in a low-income housing credit unit depends on the number of bedrooms in that unit. Prior to 1990, maximum allowable rent was determined on the basis of the actual family size of the occupants.

HOUSE BILL

The House bill allows an irrevocable election by the owner of a building placed-in-service before 1990 to use either apartment size or family size in determining maximum allowable rent. This election must be made within 180 days after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill except that availability of the election is limited to taxpayers who enter into a compliance monitoring agreement with the housing credit agency.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

c. Community service areas

PRESENT LAW

Generally, the basis on which the low-income housing credit is computed is determined as a percentage of the eligible basis of a qualified low-income building that is attributable to low-income rental units.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that community service buildings in projects in qualified census tracts are included in eligible basis as functionally related and subordinate facilities if (a) the size of the facilities is commensurate with tenant needs, (b) the use of the facilities is predominantly (although not exclusively) by tenants and employees of the project owner, and (c) no more than 20 percent of the housing project's eligible basis is attributable to such facilities.

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

d. Limit on eligible basis

PRESENT LAW

There is no explicit requirement that allocating agencies consider the reasonableness of development and operating costs in allocating credits.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires that the allocating agency take the reasonableness of the developmental and operational costs of a project into account in determining its credit allocation.

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

e. Ten-year anti-churning rule

PRESENT LAW

The low-income housing credit is not allowed with respect to buildings that have been previously placed in service within ten years of placement in service for credit purposes. Waivers from the ten-year rule may be granted by the Treasury Department under certain circumstances (e.g., certain buildings which are substantially assisted, financed, or operated under section 221(d)(3) of the National Housing Act).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment authorizes the Treasury Department to grant waivers from the credit's ten-year anti-churning rule for certain projects substantially assisted, financed, or operated under section 221(d)(4) of the National Housing Act.

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

f. Minimum set-aside rule: De minimis errors

PRESENT LAW

Under the general low-income tenant occupancy requirement, a residential rental project qualifies for the tax credit only if at least: (1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 50 percent or less of area median income or (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 60 percent or less of area median income.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment authorizes the Treasury Department to provide a waiver of penalties for de minimis errors in the application of the low-income tenant occupancy requirement.

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

g. Minimum set-aside rule: annual recertification

PRESENT LAW

Generally, tenant incomes must be annually recertified to meet the low-income tenant occupancy requirements regardless of whether the building is entirely devoted to low-income tenants.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment authorizes the Treasury Department to grant a waiver from the annual recertification of tenant income for tenants in buildings, if the buildings are occupied entirely by low-income tenants.

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

h. Student housing

PRESENT LAW

A housing unit generally is not eligible for the low-income housing tax credit if the tenants are full-time students who are not married individuals filing joint returns. Exceptions to this rule allow the credit to be claimed on housing units occupied by persons who are enrolled in certain job training programs or by students who are receiving Aid to Families with Dependent Children (AFDC) payments.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that a housing unit occupied entirely by full-time students may qualify for the credit if the full-time students are a single parent and his or her minor children and none of the tenants is a dependent of a third party. The amendment also codifies the present-law exception regarding married students filing joint returns (which continues to apply to all buildings placed in service since original enactment of the low-income housing credit by the Tax Reform Act of 1986).

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

i. State credit authority limitation

PRESENT LAW

Each State receives an annual low-income housing credit volume ceiling of $1.25 per resident. To qualify for the credit, a building owner generally must receive a credit allocation from the appropriate State credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation.

That portion of a State's credit authority which is unallocated in the year in which it originally arises may be carried forward and added to the State's credit authority for the subsequent calendar year. If allocations in the subsequent year exceed that year's annual credit authority, but do not exhaust the sum of that year's annual credit authority plus any credit authority carried forward from the preceding year, any remaining carried-forward credit authority is allocated in the next subsequent year to the national pool.

HOUSE BILL

No provision.

SENATE AMENDMENT

For purposes of the carryforward rule, the Senate amendment treats credits carried forward from previous years as used before current year credits.

CONFERENCE AGREEMENT

The conference agreement does not follow the Senate amendment.

j. Waivers in the event of a natural disaster

PRESENT LAW

Under present law the Secretary of the Treasury has no explicit authority to waive credit requirements in the event of a natural disaster.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate bill the Secretary of the Treasury may waive certain credit requirements in cases related to Hurricane Andrew, Hurricane Iniki and Typhoon Omar.

(1) The Secretary may waive for two years the requirement that a building which qualifies under the 10-percent test of sec. 42(h)(1)(E) must be placed in service by the end of the second calendar year after the calendar year in which the allocation is made.

(2) The Secretary may waive until income information is reasonably obtainable the requirement that a prospective tenant provide written verification of the prospective tenant's income for purposes of determining eligibility under the credit rules.

(3) The Secretary may waive the (general) area median gross income requirements (Sec. 42(g)(1)) for tenants if that tenant's income is initially 140 percent or less of that requirement.

(4) The Secretary may waive the prohibition against short-term leases (six months or less) of credit units.

(5) The Secretary may waive the prohibition that credit properties may not have been previously placed-in-service for 10 years before the placement-in-service for the credit.

(6) The Secretary may increase an otherwise qualifying States share of the National pool if a natural disaster occurred in that State.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

k. Effective dates

PRESENT LAW

The credit expired after June 30, 1992.

HOUSE BILL

The provision relating to the extension of the credit is effective after June 30, 1992. The provision relating to maximum rent is effective on the date of enactment.

SENATE AMENDMENT

The provision relating to the extension of the credit is effective after June 30, 1992. The provisions relating to modification of the credit are also effective after June 30, 1992 except in three cases. The three provisions relating to the Treasury Department's authority to grant waivers are effective on date of enactment. The provision relating to the credit carryforward rules is effective on or after January 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with regard to the extension and maximum rent provisions and follows the Senate amendment with regard to the provision allowing waivers in the event of natural disasters.

8. Extension of targeted jobs tax credit

PRESENT LAW

Tax credit

The targeted jobs tax credit is available on an elective basis for hiring individuals from several targeted groups. No wages are taken into account for purposes of the credit unless the eligible employee is employed by the employer for the lesser of 90 days or 120

hours. The credit expired for individuals who began work for an employer after June 30, 1992.

Authorization of appropriations

Appropriations were authorized for administration and publicity expenses relating to the credit through June 30, 1992. These monies are to be used by the Internal Revenue Service and the Department of Labor to inform employers of the credit program.

HOUSE BILL

Extension

The House bill permanently extends the targeted jobs tax credit and the authorization for appropriations.

Economically disadvantaged youth

The House bill expands the definition of economically disadvantaged youth to include 23- and 24-year olds.

Long-term unemployed

No provision.

Residents of enterprise zones

No provision.

Minimum employment requirement

No provision.

Effective date.—The provision is effective for individuals who begin work for an employer after June 30, 1992.

SENATE AMENDMENT

Extension

The Senate amendment extends the targeted jobs tax credit and the authorization for appropriations for 15 months (through September 30, 1993).

Economically disadvantaged youth

No provision.

Long-term unemployed

The Senate amendment adds a new category of long-term unemployed individuals.

Residents of enterprise zones

The Senate amendment adds a new category of residents of Federally designated enterprise zones.

Minimum employment requirement

Under the Senate amendment, the 120-hour component of the minimum employment requirement is repealed.

Effective date.—The provision is effective for individuals who begin work for an employer after June 30, 1992.

CONFERENCE AGREEMENT

Extension

The conference agreement follows the House bill.

Economically disadvantaged youth

The conference agreement follows the House bill.

Long-term unemployed

The conference agreement does not follow the Senate amendment.

Residents of enterprise zones

The conference agreement does not follow the Senate amendment.

Minimum employment requirement

The conference agreement does not follow the Senate amendment.

Effective date.—The conference agreement follows the House bill and the Senate amendment.

9. Tax credit for orphan drug clinical testing expenses

PRESENT LAW

The orphan drug tax credit provides a 50-percent nonrefundable tax credit for a taxpayer's qualified clinical testing expenses paid or incurred in the testing of certain drugs for rare diseases, generally referred to as "orphan drugs." Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration (FDA) but before the drug has been approved for sale by the FDA. Present law defines a rare disease or condition as one that (1) affects less than 200,000 persons in the United States or (2) affects more than 200,000 persons, but there is no reasonable expectation that businesses could recoup the costs of developing a drug for it from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).

The orphan drug tax credit expired after June 30, 1992.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment extends the orphan drug tax credit for 15 months (i.e., for qualified clinical testing expenses incurred through September 30, 1993).

Effective date.—The provision is effective for expenses incurred during the period July 1, 1992, through September 30, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the orphan drug tax credit is extended for 12 months (i.e., for qualified clinical testing expenses incurred during July 1, 1992, through June 30, 1993).

10. Excise Tax on Certain Vaccines for the Vaccine Injury Compensation Trust Fund

PRESENT LAW

The Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") provides a source of revenue to compensate individuals who are injured (or die) as a result of the administration of certain vaccines: diphtheria, pertussis, and tetanus ("DPT"); diphtheria and tetanus ("DT"); measles, mumps, and rubella ("MMR"); and polio. The Vaccine Trust Fund provides the funding source for the National Vaccine Injury Compensation Program ("Program"), which provides a substitute, Federal "no-fault" insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers.

Under the Program, all persons who were immunized with a covered vaccine after the effective date of the Program, October 1, 1988, are prohibited from commencing a civil action in State court for vaccine-related damages unless they first file a petition with the United States Claims Court, where such petitions are assigned to a special master and governed by streamlined procedural rules designed to expedite the proceedings.[1] In these cases, the Federal Government is the respondent party in the proceedings, and the claimant generally must show only that certain medical conditions (or death) followed the administration of a covered vaccine and that the first onset of symptoms occurred within a prescribed time period.[2] Compensation under the Program generally is limited to actual and projected unreimbursed medical, rehabilitative, and custodial expenses, lost earnings, pain and suffering (or, in the event of death, a recovery for the estate) up to $250,000, and reasonable attorney's fees.[3] Only if the final settlement under the Program is rejected may the claimant proceed with a civil tort action in the appropriate State court, where recovery generally will be governed by State tort law principles,[4] subject to certain limitations and

[1] Persons who received vaccines before the Program's effective date of October 1, 1988 ("retrospective cases") also may be eligible for compensation under the Program if they had not yet received compensation and elected to file a petition with the United States Claims Court on or before January 31, 1991. Under the Program, awards in retrospective cases are somewhat limited compared to "prospective cases" (i.e., those where the vaccine was administered on or after October 1, 1988). Awards in retrospective cases are not paid out of the Vaccine Trust Fund but are paid out of funds specially authorized by Congress. See 42 U.S.C. sec. 300aa-15(i), (j) (appropriating $80 million for fiscal year 1989 and for each subsequent year).

[2] Compensation may not be awarded, however, if there is a preponderance of the evidence that the claimant's condition or death resulted from factors unrelated to the vaccine in question.

[3] 42 U.S.C. sec. 300aa-15.

The conferees wish to clarify their understanding that amounts received by a claimant from the Vaccine Trust Fund constitute damages received on account of personal injuries or sickness for purposes of the exclusion from gross income provided by the general rules of section 104(a)(2).

[4] In most State proceedings, significant issues arise whether injuries suffered by a child after immunization were, in fact, caused by the vaccine administered and whether the manufacturer was at fault in either the manufacture or marketing of the vaccine.

specifications imposed by the National Childhood Vaccine Injury Act of 1986.[5]

The Vaccine Trust Fund is funded by a manufacturer's excise tax on DPT, DT, MMR, and polio vaccines (and any other vaccines used to prevent these diseases). The excise tax per dose is $4.56 for DPT, $0.06 for DT, $4.44 for MMR, and $0.29 for polio vaccines.

The vaccine excise tax will expire after the later of: (1) December 31, 1992; or (2) the date on which the Vaccine Trust Fund revenues exceed the projected liabilities with respect to compensable injuries from vaccines administered before October 1, 1992. Amounts in the Vaccine Trust Fund are available for the payment of compensation under the Program with respect to vaccines administered after September 30, 1988, and before October 1, 1992.

HOUSE BILL

Extension of excise tax and Program funding

The present-law excise taxes imposed on certain vaccines are extended for two years (i.e., through December 31, 1994). Authorization for compensation to be paid from the Vaccine Trust Fund for certain damages resulting from vaccines administered after September 30, 1988, and before October 1, 1992, also is extended for two years (i.e., for vaccines administered after September 30, 1988, and before October 1, 1994).[6]

Study

In addition, the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, is directed to conduct a study of: (1) the estimated amount that will be paid from the Vaccine Trust Fund with respect to vaccines administered after September 30, 1988, and before October 1, 1994; (2) the rates of vaccine-related injury or death with respect to various types of vaccines; (3) new vaccines and immunization practices being developed or used for which amounts may be paid from the Vaccine Trust Fund; (4) whether additional vaccines should be included in the Program; and (5) the appropriate treatment of vaccines produced by State governmental entities. The Secretary of the Treasury must submit a report detailing his findings not later than January 1, 1994, to the House Committee on Ways and Means and the Senate Committee on Finance.

Effective Date

The provisions are effective on the date of enactment.

---

[5] Title III, P.L. 99-660. This Act preempts State tort law to a limited extent by imposing limits on recovery from vaccine manufacturers. Among the limitations are a prohibition on compensation if the injury or death resulted from side effects that were unavoidable; a presumption that manufacturers are not negligent in manufacturing or marketing vaccines if they complied, in all material respects, with Federal Food and Drug Administration requirements; and limits on punitive damage awards.

[6] The committee report to the House bill states that it is intended that the Secretary of the Treasury expeditiously (within 60 days of enactment) adopt rules for purposes of section 4221 for determining when exported vaccines which will be administered to individuals not eligible for compensation under the program are not subject to tax.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

11. Permanent extension of general fund transfer to Railroad Retirement Tier 2 Fund

PRESENT LAW

The proceeds from the income taxation of railroad retirement Tier 2 benefits are transferred from the general fund of the Treasury to the Railroad Retirement Account. This transfer applies only to proceeds from the taxation of benefits which have been received prior to October 1, 1992. Proceeds from the taxation of benefits received after this date remain in the general fund.

HOUSE BILL

The transfer of proceeds from the income taxation of railroad retirement Tier 2 benefits from the general fund of the Treasury to the Railroad Retirement Account is made permanent.

Effective date.—The provision is effective beginning September 30, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

12. Extension and modification of credit for producing fuel from nonconventional sources

PRESENT LAW

The production of fuels from certain nonconventional sources is eligible for a production credit equal to $3 per barrel or Btu oil barrel equivalent.[1] The credit amount generally is adjusted for inflation, except for gas produced from a tight formation. To qualify for the credit, specified fuels must be produced domestically from a well drilled, or a facility placed in service, before January 1, 1993, and sold before January 1, 2003.

Qualified fuels include (1) oil produced from shale and tar sands, (2) gas produced from geopressured brine, Devonian shale, coal seams, a tight formation, or biomass (i.e., any organic material other than oil, natural gas, or coal (or any product thereof), and (3) liquid, gaseous, or solid synthetic fuels produced from coal (includ-

[1] A barrel-of-oil equivalent generally means that amount of the qualifying fuel which has a Btu content of 5.8 million.

ing lignite), including such fuels when used as feedstocks. The amount of the credit is determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before 1980.

For purposes of the credit, oil produced from shale is considered a qualifying fuel only if it is liquid oil obtained from shale rock after the retorting (heating) process but before hydrogenation, refining, or any other process subsequent to retorting.[2] Shale oil produced by other means does not qualify.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the section 29 credit placed in service date for wells and facilities for eight months. Thus, production from wells drilled and facilities placed in service after December 31, 1979 and before September 1, 1993 qualifies for the credit if sold before January 1, 2003. In addition, the Senate amendment generally treats facilities that produce either (1) gas from biomass or (2) liquid, gaseous, or solid synthetic fuels from coal as being placed in service before September 1, 1993 if the facility is actually placed in service before January 1, 1997 pursuant to a binding written contract in effect before January 1, 1996 and at all times thereafter until the facility is placed in service. Production from such facilities qualifies for the credit if sold before January 1, 2008. Production from facilities that produce coke or coke gas, however, qualifies for the credit only if (1) the original use of the facility commences with the taxpayer, or (2) the taxpayer owns the facility on December 31, 1992 and at all times thereafter.

The Senate amendment also modifies the operation of the credit in several respects. First, the Senate amendment generally allows the credit, at the present-law rate (adjusted for inflation as provided under present law), only for the first 42 million cubic feet of gas produced from any well during a taxable year. Except for production of certain coal seams gas and gas from tight formations (as discussed below), no credit is allowed for production in excess of this level. For purposes of applying the per-well production limitation in the case of gas produced from Devonian shale where wells are operated under a unitization agreement and production from the unit's wells is not separately metered, total production from the unit is apportioned ratably to all the producing wells in the unit.

In the case of either gas produced from a tight formation or coal seams gas if captured from the de-stressed zone associated with any full-seam extraction of coal which extends above and below mined-out coal seams (so-called "gob gas"), the Senate amendment allows a lesser credit, equal to $2.25 per barrel of oil equivalent (not indexed for inflation), for annual production between 42 million and 550 million cubic feet from a well.

[2] Senate Report No. 96-394, 96th Cong., 1st Sess., at 87.

Second, the Senate amendment provides that the first 7,125 barrels of annual oil production from a well in the Bakken shale formation qualifies for the credit. In this case, the credit applies regardless of the production method employed to extract the oil from this formation.

Effective date.—Production from wells drilled, and facilities placed in service, after December 31, 1992. Thus, for example, the limitation on the credit based on production from a well applies only to production from wells drilled after that date. Production from wells drilled prior to 1993 continues to qualify for the credit as under present law.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

13. Allocation and Apportionment of Research Expenses (secs. 861-864 of the Code)

PRESENT LAW

U.S. persons are taxable on their worldwide income, including their foreign income. Foreign source taxable income equals foreign source gross income less the expenses, losses and other deductions properly apportioned or allocated to that income. The Internal Revenue Code generally articulates only the broad principles of how expenses reduce U.S. and foreign source gross income, leaving the Treasury Department to provide detailed rules for the task of allocating and apportioning expenses.

Treasury regulations issued in 1977 described methods for allocating expenses between U.S. and foreign source income, including rules for the allocation of research and development (R&D) expenses. Upon issuance of these regulations, a significant dispute regarding the appropriate allocation of R&D expenses developed between taxpayers and the Treasury Department. This unresolved dispute between taxpayers and the Treasury Department precipitated Congressional involvement on this issue, and since 1981, the R&D allocation regulations have been subject to a series of eight statutory suspensions and temporary modifications. The current temporary statutory provision is applicable generally for the first six months of the first taxable year beginning after August 1, 1991, and among other rules, automatically allocates 64 percent of U.S. performed R&D to U.S. source income, and generally permits a greater amount of taxable income to be classified as foreign source than under the 1977 regulations. This will increase the benefits of the foreign tax credit to many taxpayers.

On June 24, 1992, it was announced that the Treasury Department and the IRS have undertaken a review of the R&D allocation regulations, and that in light of this review, the IRS temporarily will not require that taxpayers apply those regulations (Rev. Proc. 92-56, 1992-28 I.R.B. 7). According to this Revenue Procedure, taxpayers would not be required to apply the R&D allocation regulations with respect to R&D expenses incurred during what would ordinarily be an 18-month transition period—that is, the last six

months of the taxpayer's first taxable year beginning after August 1, 1991 and the immediately succeeding taxable year—provided that such deductions are allocated and apportioned in accordance with a method based on the temporary statutory provision, described above, applicable generally for the first six months of the first taxable year beginning after August 1, 1991. The Revenue Procedure states that this transition method is not intended to suggest any views about the proper allocation and apportionment of R&D expenses, and that it is intended solely to provide taxpayers with transition relief and to minimize audit controversy and facilitate business planning during the conduct of the regulatory review.

HOUSE BILL

The House bill contains no provision on the allocation and apportionment of R&D expenses. However, the Report of the Committee on Ways and Means to accompany H.R. 11 states that the committee believes that the Treasury Department has broad authority under current law to revise the current R&D allocation regulations. The report states that according to the Treasury Department's *General Explanations of the President's Budget Proposals Affecting Receipts* (January 1992), the Administration believes in providing tax incentives to increase the performance of U.S.-based research activities. The report further states that since the Administration has indicated its support of an allocation system that provides incentives to increase the performance of U.S.-based research activities, the committee expects, and in the strongest terms, urges the Treasury Department to revise its permanent regulations in a manner consistent with the Administration's stated objectives and proposals, as set forth in the Treasury explanation. The report states that the committee believes that such a revision would be consistent both with current law regulatory authority and with the stated goals of the Administration.

The report states that the committee further urges the Treasury Department, when revising its regulations, to take into consideration that taxpayers, in appropriate circumstances, are required for business purposes to conduct significant amounts of R&D at foreign sites and should not be penalized by the allocation rules.

The report states that the committee expects and requests the Treasury Department to issue regulations immediately, to be effective for all periods after the termination of the current temporary rules.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and Senate amendment. The conferees adopt the views expressed in the House report.

C. Investment in Real Estate

1. Modification of the passive loss rules for certain real estate persons

Present Law

The passive loss rules limit deductions and credits from passive trade or business activities. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income, such as wages, portfolio income, or business income that is not derived from a passive activity. A similar rule applies with respect to credits from passive activities. Deductions and credits suspended under these rules are carried forward to the next taxable year, and are allowed in full when the taxpayer disposes of his entire interest in the passive activity to an unrelated person.

Passive activities are defined to include trade or business activities in which the taxpayer does not materially participate. Rental activities (including rental real estate activities) are also treated as passive activities, regardless of the level of the taxpayer's participation.

House Bill

The House bill treats a taxpayer's rental real estate activities in which he materially participates as not subject to limitation under the passive loss rules if the taxpayer meets eligibility requirements relating to real property trades or businesses in which the taxpayer performs services.

Real property trade or business means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

An individual meets the eligibility requirements if more than half of the personal services the taxpayer performs in a trade or business are in real property trades or businesses in which he materially participates. Personal services performed as an employee are not treated as performed in a real estate trade or business unless the person performing the services has more than a 5 percent ownership interest in the employer.

A closely held C corporation meets the eligibility requirements if more than 50 percent of its gross receipts for the taxable year are derived from real property trades or businesses in which the corporation materially participates.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 1991.

Senate Amendment

The Senate amendment is the same as the House bill, except that under the amendment, if the taxpayer meets eligibility requirements with respect to real property trades or businesses in which he performs services, then the taxpayer's net loss from rental real estate activities in which the taxpayer materially participates generally is allowed to offset income from real property

trade or business activities. The portion of the taxpayer's passive activity loss allowed under the Senate amendment may not exceed the lesser of (1) the taxpayer's net income from real property trade or business activities which are not passive activities, or (2) the taxpayer's taxable income (determined without regard to this provision). A similar rule applies with respect to passive activity credits. The Senate amendment does not apply to closely held C corporations.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the House bill, with a modification to the effective date. The provision is effective with respect to taxable years beginning after December 31, 1992.

2. Changes relating to real estate investments by pension funds and others

a. Modification of the rules related to debt-finance income (sec. 2111 of the bill and sec. 514 of the Code)

Present Law

In general, a qualified pension trust or an organization that is otherwise exempt from Federal income tax is taxed on any income from a trade or business that is unrelated to the organization's exempt purposes (Unrelated Business Taxable Income or "UBTI") (sec. 511). Certain types of income, including rents, royalties, dividends, and interest are excluded from UBTI, except when such income is derived from "debt-financed property." Income from debt-financed property generally is treated as UBTI in proportion to the amount of debt financing (sec. 514(a)).

An exception to the rule treating income from debt-financed property as UBTI is available to pension trusts, educational institutions, and certain other exempt organizations (collectively referred to as "qualified organizations") that make debt-financed investments in real property (sec. 514(c)(9)(A)). Under this exception, income from investments in real property is not treated as income from debt-financed property. Mortgages are not considered real property for purposes of the exception.

The real property exception to the debt-financed property rules is available for investments in debt-financed property, only if the following six restrictions are satisfied: (1) the purchase price of the real property is a fixed amount determined as of the date of the acquisition (the "fixed price restriction"); (2) the amount of the indebtedness or any amount payable with respect to the indebtedness, or the time for making any payment of any such amount, is not dependent (in whole or in part) upon revenues, income, or profits derived from the property (the "participating loan restriction"); (3) the property is not leased by the qualified organization to the seller or to a person related to the seller (the "leaseback restriction"); (4) in the case of a pension trust, the seller or lessee of the property is not a disqualified person (the "disqualified person restriction"); (5) the seller or a person related to the seller (or a person related to the plan with respect to which a pension trust

was formed) is not providing financing in connection with the acquisition of the property (the "seller-financing restriction"); and (6) if the investment in the property is held through a partnership, certain additional requirements are satisfied by the partnership (the "partnership restrictions") (sec. 514(c)(9)(B)(i) through (vi)).

House Bill

Relaxation of the leaseback and disqualified person restrictions

The bill relaxes the leaseback and disqualified person restrictions to permit a limited leaseback of debt-financed real property to the seller (or a person related to the seller) or to a disqualified person.[1] The exception applies only where (1) no more than 25 percent of the leasable floor space in a building is leased back to the seller (or related party) or to the disqualified person, and (2) the lease is on commercially reasonable terms.

Relaxation of the seller-financing restriction

The bill relaxes the seller-financing restriction to permit seller financing on terms that are commercially reasonable. The bill grants authority to the Treasury Department to issue regulations for the purpose of determining commercially reasonable financing terms.

The bill does not modify the present-law fixed price and participating loan restrictions. Thus, for example, income from real property acquired with financing where the timing or amount of payment is based on revenue, income, or profits from the property generally will continue to be treated as income from debt-financed property, unless some other exception applies.

Relaxation of the fixed price and participating loan restriction for property foreclosed on by financial institutions

The bill relaxes the fixed price and participating loan restrictions for certain sales of real property foreclosed upon by financial institutions.[2] The relaxation of these rules is limited to cases where: (1) a qualified organization acquires the property from a financial institution that acquired the real property by foreclosure (or after an actual or imminent default), or was held by the financial institution at the time that it entered into conservatorship or receivership; (2) the property is not a capital asset of the financial institution; (3) the stated principal amount of the seller financing does not exceed the financial institution's outstanding indebtedness (including accrued but unpaid interest) with respect to the property at the time of foreclosure; and (4) the value of any participation feature at the time of sale does not exceed 30 percent of the value of the property.

The bill grants authority to the Treasury Department to issue regulations for the purpose of clarifying these limitations. In particular, these regulations are expected to establish standards for

---

[1] As under present law, a leaseback to a disqualified person remains subject to the prohibited transaction rules set forth in section 4975.

[2] For this purpose, financial institutions include financial institutions in conservatorship or receivership and certain affiliates of financial institutions.

determining what constitutes a participation feature and how to determine whether the value of a participation feature at the time of sale exceeds 25 percent of the value of the property. For example, a participation feature that provides the seller with less than a 25 percent interest in net proceeds, net income, or gain on sale of the property is expected to be valued at less than 25 percent of the value of the property.

Effective date

The provision is effective for acquisitions on or after June 25, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that financial institutions are defined to include government corporations that succeed to the rights and interests of a receiver or conservator.

The Senate amendment is effective for acquisitions on or after July 28, 1992. The provision also is effective for leases entered into on or after July 28, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except that the provision is effective for acquisitions on or after October 1, 1992.

b. Special rules for investments in partnerships

PRESENT LAW

In general, the character of a partner's distributive share of partnership income is the same as if the income had been directly realized by the partner. Thus, whether a tax-exempt organization's share of income from a partnership (other than from a publicly-traded partnership) is treated as unrelated business income depends on the underlying character of the income (sec. 512(c)(1)). In addition, as noted above, the real property exception for investments in debt-financed property depends on whether the sec. 514(c)(9)(B)(i) through (vi) restrictions are satisfied.

Furthermore, a tax-exempt organization's distributive share of gross income from a publicly-traded partnership (that is not otherwise treated as a corporation) automatically is treated as UBTI (sec. 512(c)(2)(A)). The organization's share of the partnership deductions is allowed in computing the organization's taxable unrelated business income (sec. 512(c)(2)(B)).

HOUSE BILL

Elimination of the section 514(c)(9)(B) restrictions for investments through certain large partnerships

The bill eliminates the six section 514(c)(9)(B) restrictions for qualified organizations that invest in real property through certain "large" partnerships.

A "large" partnership is a partnership having at least 250 partners that satisfies the following three tests: (1) interests in the partnership are registered with the Securities and Exchange Commission; (2) a significant percentage (at least 50 percent) of each class of interests is owned by taxable individuals; and (3) a principal purpose of the partnership allocations is not tax avoidance. Partnership interests that are subject to the same terms are considered to be in the same class, regardless of whether the interests are subject to different ownership restrictions (a partnership can therefore monitor the 50-percent ownership restriction by requiring that designated interests be held only by taxable persons).

Repeal of the automatic UBTI rule for publicly-traded partnerships

The bill repeals the rule that automatically treats income from publicly-traded partnerships as UBTI. Thus, under the provision, investments in publicly-traded partnerships are treated the same as investments in other partnerships for purposes of the UBTI rules.

Effective date

The provision is effective for partnership interests acquired on or after June 25, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, with the modifications that (1) individual retirement accounts are excluded from the calculation of the requirement of 50 percent taxable partners. In addition, the provision is effective for partnership years ending after July 28, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except that the provision is effective for partnership years ending on or after October 1, 1992.

c. Permit title-holding companies to receive small amounts of UBTI (sec. 2113 of the bill and secs. 501(c)(2) and (c)(25) of the Code)

PRESENT LAW

Section 501(c)(2) provides tax-exempt status to certain corporations organized for the exclusive purpose of holding title to property and turning over any income from the property to one or more related tax-exempt organizations. Section 501(c)(25) provides tax-exempt status to certain corporations and trusts that are organized for the exclusive purposes of acquiring and holding title to real property, collecting income from such property, and remitting the income therefrom to no more than 35 shareholders or beneficiaries that are: (1) qualified pension, profit-sharing, or stock bonus plans (sec. 401(a)); (2) governmental pension plans (sec. 414(d)); (3) the United States, a State or political subdivision, or governmental agencies or instrumentalities; or (4) tax-exempt charitable, educational, religious, or other organizations described in section

501(c)(3). However, the IRS has taken the position that a title-holding company described in section 501(c)(2) or 501(c)(25) will lose its tax-exempt status if it generates any amount of certain types of UBTI.[3]

HOUSE BILL

The bill permits a title-holding company that is exempt from tax under sections 501(c)(2) or 501(c)(25) to receive UBTI up to 10 percent of its gross income for the taxable year, provided that the UBTI is incidentally derived from the holding of real property. For example, income generated from parking or operating vending machines located on real property owned by a title-holding company generally would qualify for the 10-percent de minimis rule, while income derived from an activity that is not incidental to the holding of real property (e.g., manufacturing) would not qualify. In cases where unrelated income is incidentally derived from the holding of real property, receipt by a title-holding company of such income (up to the 10-percent limit) will not jeopardize the title-holding company's tax-exempt status, but nonetheless, will be subject to tax as UBTI.

In addition, the bill provides that a section 501(c)(2) or 501(c)(25) title-holding company will not lose its tax-exempt status if UBTI that is incidentally derived from the holding of real property exceeds the 10-percent limitation, provided that the title-holding company establishes to the satisfaction of the Secretary of the Treasury that the receipt of UBTI in excess of the 10-percent limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such excess UBTI.

Effective date.—The provision is effective for taxable years beginning after December 31, 1991.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with a clarification that the 10 percent limitation applies only to income that would have resulted in disqualification without regard to this new provision.

d. Exclusion from UBTI any gains from the disposition of property acquired from financial institutions in conservatorships or receiverships (sec. 2114 of the bill and sec. 512(b) of the Code)

PRESENT LAW

In general, gains or losses from the sale, exchange or other disposition of property are excluded from UBTI (sec. 512(b)(5)). However, gains or losses from the sale, exchange or other disposition of property held primarily for sale to customers in the ordinary

[3] IRS Notice 88-121, 1988-2 C.B. 457. See also Treas. Reg. sec. 1.501(c)(2)-1(a).

course of a trade or business are not excluded from UBTI (the "dealer UBTI rule") (sec. 512(b)(5)(B)).

House Bill

The bill provides an exception to the dealer UBTI rule by excluding gains from the sale, exchange or other disposition of certain real property and mortgages acquired from financial institutions that are in conservatorship or receivership. Only real property and mortgages owned by a financial institution (or that was security for a loan extended by the financial institution) at the time that the institution entered conservatorship or receivership are eligible for the exception.

The exclusion is limited to properties designated as disposal property within six months of acquisition, and disposed of within two-and-a-half years of acquisition. The two-and-a-half year disposition period may be extended by the Secretary if an extension is necessary for the orderly liquidation of the property. No more than one-third by value of properties acquired in a single transaction may be designated as disposal property.

The exclusion is not available for properties that are developed in any significant manner (thus, for example, property that is developed by the securing of zoning permits is not eligible for the exception).

Effective date.—The provision is effective for property acquired on or after June 25, 1992.

Senate Amendment

The Senate amendment is the same as the House bill with the modification that the amendment permits: (1) designations of disposal property within nine months of acquisition (rather than six months), (2) one-half by value (rather than one-third by value) of properties to be designated as disposal property, and (3) improvement and development of disposal property to the extent that the aggregate expenditures on development do not exceed 20 percent of the net selling price of the property (rather than prohibit significant development activity).

The provision is effective for property acquired on or after July 28, 1992.

Conference Agreement

The conference agreement follows the Senate amendment except that the provision is effective for acquisitions on or after October 1, 1992.

e. *Exclusion of loan commitment fees and certain option premiums from UBTI (sec. 2115 of the bill and sec. 512(b) of the Code)*

Present Law

Income from a trade or business that is unrelated to an exempt organization's purpose generally is UBTI. Passive income such as dividends, interest, royalties, and gains or losses from the

sale, exchange or other disposition of property generally is excluded from UBTI (sec. 512(b)). In addition, gains on the lapse or termination of options on securities are explicitly exempted from UBTI (sec. 512(b)(5).

Present law is unclear on whether loan commitment fees and premiums from unexercised options on real estate are UBTI.

HOUSE BILL

The bill provides that loan commitment fees and premiums from unexercised options on real estate are excluded from UBTI. For purposes of this provision, loan commitment fees are non-refundable charges made by a lender to reserve a sum of money with fixed terms for a specified period of time. These charges are to compensate the lender for the risk inherent in committing to make the loan (e.g., for the lender's exposure to interest rate changes and for potential lost opportunities).

Effective date.—The provision is effective for premiums or loan commitment fees that are received on or after June 25, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill except that the provision is effective for premiums or loan commitment fees that are received on or after July 28, 1992.

CONFERENCE REPORT

The conference agreement follows the Senate amendment except that the provision is effective for premiums or loan commitment fees that are received on or after October 1, 1992.

f. Relaxation of limitations on investments in real estate investment trusts by pension funds (sec. 2116 of the bill and sec. 856(h) of the Code)

PRESENT LAW

A real estate investment trust ("REIT") is not taxed on income distributed to shareholders. A corporation does not qualify as a REIT if at any time during the last half of its taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by five or fewer individuals ("the five or fewer rule"). A domestic pension trust is treated as a single individual for purposes of this rule.

Dividends paid by a REIT are not UBTI,[4] unless the stock in the REIT is debt-financed. Depending on its character, income earned by a partnership may be UBTI (sec. 512(c)). Special rules treat debt-financed income earned by a partnership as UBTI (sec. 514(c)(9)(B)(vi)).

[4] See Rev. Rul. 66-151, 1966-1 C.B. 151.

House Bill

Qualification as a REIT

The bill provides that a pension trust generally is not treated as a single individual for purposes of the five-or-fewer rule. Rather, the bill treats beneficiaries of the pension trust as holding stock in the REIT in proportion to their actuarial interests in the trust. This rule does not apply if disqualified persons, within the meaning of section 4975(e)(2) (other than by reason of subparagraphs (B) and (I)), together own five percent or more of the value of the REIT stock and the REIT has earnings and profits attributable to a period during which it did not qualify as a REIT.[5]

In addition, the bill provides that a REIT cannot be a personal holding company and, therefore, is not subject to the personal holding company tax on its undistributed income.

Unrelated business taxable income

Under the bill, certain pension trusts owning more than 10 percent of a REIT must treat a percentage of dividends from the REIT as UBTI. This percentage is the gross income derived from an unrelated trade or business (determined as if the REIT were a pension trust) divided by the gross income of the REIT for the year in which the dividends are paid. Dividends are not treated as UBTI, however, unless this percentage is at least five percent.

The UBTI rule applies only if the REIT qualifies as a REIT by reason of the above modification of the five or fewer rule. Moreover, the UBTI rule applies only if (1) one pension trust owns more than 25 percent of the value of the REIT, or (2) a group of pension trusts individually holding more than 10 percent of the value of the REIT collectively own more than 50 percent of the value of the REIT.

Effective date

The provision applies to taxable years beginning after December 31, 1991.

Senate Amendment

The Senate Amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment except for a change in the formula for determining the percentage of dividends from the REIT that must be treated as UBTI. Under the conference agreement, the percentage is the modified gross income derived from an unrelated trade or business (determined as if the REIT were a pension trust) divided by the modified gross income of the REIT for the year in which the dividends are paid. Modified gross income is defined as gross income less deductions directly connected with such income. These

---

[5] Moreover, as under present law, any investment by a pension trust must be in accordance with the fiduciary rules of the Employee Retirement Security Act ("ERISA") and the prohibited transaction rules of the Code and ERISA.

deductions include depreciation, interest (if paid on debt that was incurred in order to acquire or carry the property), real estate taxes, and direct operating expenses such as utilities, management fees, repairs, maintenance and lease commissions.

3. Tax credit for first-time homebuyers

PRESENT LAW

There is no tax credit for the purchase of a principal residence under present law.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, individuals who purchase a principal residence are eligible to receive a tax credit equal to 10 percent of the purchase price of the residence, up to a maximum credit of $2,500. The credit applies to a principal residence if (1) the taxpayer acquires such residence on or after July 28, 1992, and before January 1, 1993, or (2) the taxpayer enters into a binding contract to acquire such residence on or after July 28, 1992, and before January 1, 1993, and the taxpayer purchases and occupies such residence before April 1, 1993. One-half of the credit is allowed in the taxable year in which the purchase occurs and the other half is allowed in the following taxable year. Only one tax credit may be claimed per residence. Manufactured homes can qualify as a principal residence under the same rules as under present law, regardless of whether they are treated as real or personal property under State law.

First-time homebuyers are defined as individuals who did not have a present interest in a residence in the 3 years preceding the purchase of a home. If an individual is deferring tax on gain from the sale of a previous principal residence and is permitted an extended rollover period (Code sec. 1034), he or she is not considered a first-time homebuyer until after the end of the extended rollover period.

In the case of certain homebuyers described in Code sec. 143(i)(1)(C) whose family incomes do not exceed $15,000, ownership of land subject to certain contracts for deed described in such section does not disqualify the homebuyer as being considered a first-time homebuyer.

The first-time homebuyer credit is nonrefundable, and thus is available only to the extent the taxpayer has income tax liability to offset. However, any unused portion of the credit may be carried forward (but not beyond the fifth taxable year after the taxable year of purchase) and applied against future income tax liability.

The credit is recaptured if the residence on which the credit was claimed is sold or otherwise disposed of within 3 years of the date the residence was purchased. The recapture rule does not apply, however, to dispositions by reason of the taxpayer's death or divorce. If the taxpayer sells the residence within 3 years but purchases a new home within the rollover period, the credit is recap-

tured to the extent the taxpayer would have claimed a smaller credit on the new residence had it been purchased during the period when the credit was available.

Effective date.—The provision is effective for purchases on or after July 28, 1992.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

4. Treatment of certain real property business indebtedness of individuals

PRESENT LAW

The discharge of indebtedness generally gives rise to gross income to the debtor taxpayer. Present law provides exceptions to this general rule. Among the exceptions are rules providing that income from the discharge of indebtedness of the taxpayer is excluded from income if the discharge occurs in a title 11 case, the discharge occurs when the taxpayer is insolvent, or in the case of certain farm indebtedness. The amount excluded from income under these exceptions is applied to reduce tax attributes of the taxpayer. Prior law also provided an elective exception for the discharge of certain qualified business indebtedness; this exception was repealed by the 1986 Act.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides an election to individual taxpayers to exclude from gross income certain income from discharge of qualified real property business indebtedness. The amount so excluded cannot exceed the basis of certain depreciable real property of the taxpayer and is treated as a reduction in the basis of that property.

Qualified real property business indebtedness is indebtedness that (1) is incurred or assumed in connection with real property used in a trade or business (2) is secured by that real property, and (3) with respect to which the taxpayer has made an election under this provision. Indebtedness incurred or assumed on or after July 30, 1992 is not qualified real property business indebtedness unless it is either (1) debt incurred to refinance qualified real property business incurred or assumed before that date (but only to the extent the amount of such debt does not exceed the amount of debt being refinanced) or (2) qualified acquisition indebtedness. Qualified real property business indebtedness does not include qualified farm indebtedness.

Qualified acquisition indebtedness is debt incurred to acquire, construct or substantially improve real property that is secured by such debt, and debt resulting from the refinancing of qualified ac-

quisition debt, to the extent the amount of such debt does not exceed the amount of debt being refinanced.

The amount excluded under the provision with respect to the discharge of any qualified real property business indebtedness may not exceed the excess of (1) the outstanding principal amount of such debt (immediately before the discharge), over (2) the fair market value (immediately before the discharge) of the business real property which is security for the debt. For this purpose, the fair market value of the property is reduced by the outstanding principal amount of any other qualified real property indebtedness secured by the property immediately before the discharge.

For example, assume that on July 30, 1992, Individual J owns a building worth $150,000, used in his trade or business, that is subject to a first mortgage securing a debt of J's of $110,000 and a second mortgage securing a second debt of J's of $90,000. J is neither a bankrupt nor insolvent and neither debt is qualified farm indebtedness. J agrees with his second mortgagee to reduce the second mortgage debt to $30,000, resulting in discharge of indebtedness income in the amount of $60,000. Under the provision, assuming that J has sufficient basis in business real property to absorb the reduction (see below), J can elect to exclude $50,000 of that discharge from gross income. This is because the principal amount of the discharged debt immediately before the discharge (i.e., $90,000) exceeds the fair market value of the property securing it (i.e., $150,000 of free and clear value less $110,000 of other qualified business real property indebtedness or $40,000) by $50,000. The remaining $10,000 of discharge is included in gross income.

The amount excluded under the provision may not exceed the aggregate adjusted bases (determined as of the first day of the next taxable year or, if earlier, the date of disposition) of depreciable real property held by the taxpayer immediately before the discharge, determined after any reductions under subsections (b) and (g) of section 108. Depreciable real property acquired in contemplation of the discharge is treated as not held by the taxpayer immediately before the discharge.

The amount of debt discharge excluded under the provision is applied, using the rules of section 1017 (as modified by the Senate amendment), to reduce the basis of business real property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs. The election under 1017(b)(3) to treat inventory as qualified property does not apply. If the taxpayer disposes of real property (in the transaction that gave rise to the discharge or otherwise) prior to the first day of the next taxable year, then the reduction in basis of such property is made as of the time immediately before the disposition.

In the case of discharge of indebtedness of a partnership, the determination of whether indebtedness is qualified real property indebtedness is made at the partnership level. For example, if partnership debt is discharged, the determination of whether the debt was incurred or assumed in connection with real property used in a trade or business is made by reference to the trade or business of the partnership and real property owned by the partnership. The election to apply the provision is made at the partner level, however, on a partner by partner basis. An interest of a partner in a

partnership that owns depreciable real property is treated as depreciable real property to the extent of the partner's proportionate interest in the depreciable real property held by the partnership. The partnership's basis in depreciable real property with respect to such partner is correspondingly reduced.

If depreciable real property, the basis of which was reduced under this provision, is disposed of, then for purposes of determining the amount of recapture under section 1250: (1) any such basis reduction is treated as a deduction allowed for depreciation, and (2) the determination of what would have been the depreciation adjustment under the straight line method is made as if there had been no such reduction. Thus, the amount of the basis reduction that is recaptured as ordinary income is reduced over the time the taxpayer continues to hold the property, as the taxpayer foregoes depreciation deductions due to the basis reduction.

Effective date.—The provision is effective with respect to discharges after December 31, 1991 in taxable years ending after that date.

Conference Agreement

The conference agreement follows the Senate amendment. The conference agreement clarifies the application of the provision to S corporations. Because the taxable income of an S corporation is computed in the same manner as an individual (sec. 1363(b)), this provision applies to income from the discharge of indebtedness of an S corporation. The exclusion and basis reduction are both made at the S corporation level (sec. 108(d)(7)). If an amount is excluded from the income of an S corporation under this provision, the income flowing through to the shareholders will be reduced and the shareholders' basis in their stock will likewise be reduced in relation to the income and basis the shareholders would have if present law continued to apply. Where the reduced basis in the corporation's depreciable property later results in additional income (or a smaller loss) to the corporation because of reduced depreciation or additional gain (or smaller loss) on the disposition of the property, the additional income (or smaller loss) will flow through to the shareholders at that time and will then result in a larger increase (or smaller reduction) in the shareholders' basis than if present law continued to apply. Thus, the provision simply defers income to the shareholders.

The conference agreement also clarifies the treatment of the deemed distribution (under Code section 752) arising from the reduction in a partner's share of partnership liabilities attributable to the discharge of partnership debt. The allocation of an amount of debt discharge income to a partner results in that partner's basis in the partnership being increased by such amount (sec. 705). The reduction in the partner's share of partnership liabilities caused by the debt discharge also results in a deemed distribution (under sec. 752) which in turn results in a reduction (under sec. 733) of the partner's basis in his partnership interest. This section 733 basis reduction is separate from any reduction in basis of the partner's interest that occurs as a result of treating the partnership interest as depreciable real property to the extent of the partner's propor-

tionate interest in the depreciable real property held by the partnership (as provided under the Senate amendment).

D. Luxury Excise Tax; Diesel Fuel Excise Tax on Motorboats

1. *Repeal of luxury excise tax on boats, aircraft, jewelry, and furs; Indexing of luxury excise tax on automobiles*

Present Law

Present law imposes a ten-percent excise tax on the portion of the retail price of the following items that exceeds the thresholds specified: automobiles above $30,000; boats above $100,000; aircraft above $250,000; jewelry above $10,000; and furs above $10,000.

The tax applies to sales before January 1, 2000.

House Bill

Repeal of tax on boats, aircraft, jewelry, and fur

The House bill repeals the luxury excise tax imposed on boats, airplanes, jewelry, and furs.

Indexing of tax on automobiles

The House bill modifies the luxury excise tax on automobiles to provide that the $30,000 threshold is indexed annually for inflation occurring after 1990. Consequently, the applicable threshold for 1992 will be $30,000 increased by the 1991 inflation rate.

Equipment installed for use by disabled individuals

The House bill provides that the luxury excise tax does not apply to the cost of a part or accessory installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, in order to compensate for the effect of the disability. This exception does not apply to accessories commonly available from the manufacturer or dealer, such as power steering, power door locks, power seats, or power windows.

Effective date

The repeal of the luxury excise taxes on boats, aircraft, jewelry, and furs is effective for sales on or after January 1, 1992. The indexation of the threshold applicable to automobiles is effective for sales on or after July 1, 1992. The provision relating to the purchase of accessories or modifications by disabled persons is effective for purchases after December 31, 1990.

Persons entitled to a refund may request it from the seller from whom they purchased the taxed item, who then obtains the refund as provided under present-law Code section 6416.

Senate Amendment

Repeal of tax on boats, aircraft, jewelry, and fur

The Senate amendment is the same as the House bill.

Indexing of tax on automobiles

The Senate amendment is the same as the House bill.

Equipment installed for use by disabled individuals

The Senate amendment is the same as the House bill.

Treatment of demonstrator vehicles

The Senate amendment exempts automobile dealers from paying the luxury tax on demonstrator vehicles used for purposes other than test drives. Under the provision, the tax, if any, is to be assessed and paid on the sales price of the car when the car is sold.

Effective date

The effective date of the Senate amendment is identical to the House bill with respect to boats, airplanes, jewelry, furs, automobiles, and equipment installed for use by disabled individuals. The provision relating to the use before sale of demonstrator vehicles is effective for vehicle use beginning after June 30, 1992.

Persons entitled to a refund may request it from the seller from whom they purchased the taxed item, who then obtains the refund as provided under present-law Code section 6416.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment with respect to the repeal of the tax on boats, aircraft, jewelry, and furs, the indexing of the tax on automobiles, and the treatment of equipment installed for use by disabled individuals. The conference agreement follows the Senate amendment with respect to the treatment of demonstrator vehicles. In addition, the conference agreement modifies the effective date with respect to the indexation of the threshold applicable to automobiles to be effective for sales on or after October 1, 1992.

2. Impose excise tax on diesel fuel used in noncommercial boats

PRESENT LAW

Federal excise taxes generally are imposed on gasoline and special motor fuels used in highway transportation and by boats (14 cents per gallon). A Federal excise tax also is imposed on diesel fuel (20 cents per gallon) used in highway transportation. Diesel fuel used in trains generally is taxed at 2.5 cents per gallon.

The revenues from these taxes, minus 2.5 cents per gallon, are deposited in the Highway Trust Fund ("HTF") through September 30, 1995; all the revenues from these taxes are deposited in the HTF from October 1, 1995 through September 30, 1999. The revenues attributable to the taxes on boat and small engine gasoline fuels deposited in the HTF are transferred to the Aquatic Resources Trust Fund. Revenues from the remaining 2.5 cents per gallon are retained in the General Fund through September 30, 1995, after which time the 2.5 cents-per-gallon portion of the taxes (including the tax on diesel fuel used in trains) is scheduled to expire.

An additional 0.1-cent-per-gallon tax applies to these fuels to finance the Leaking Underground Storage Trust Fund ("LUST Fund"), generally through December 31, 1995.

Diesel fuel used in boats is not taxed.

House Bill

The House bill extends the diesel fuel excise taxes to diesel fuel used by boats. Fuel used by boats for commercial fishing, transportation for compensation or hire, or for business use other than predominantly for entertainment, amusement, or recreation, remains exempt.

As under the President's budget proposal, the tax is collected at the same point in the distribution chain as the highway diesel fuel tax (i.e., on sale to a retailer). However, to prevent unnecessary tax-paid sales followed by refunds, retailers that sell diesel fuel exclusively to boats that are exempt from the tax are permitted to buy and sell the fuel tax-free.

The revenues from the taxes on diesel fuel used by boats will be retained in the General Fund.

The tax will expire after September 30, 1997.

Effective date.—The provision is effective after September 30, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with the modification that the provision is effective after December 31, 1992.

E. Other Incentives

1. Corporate alternative minimum tax: elimination of ACE depreciation adjustment

Present Law

Under present law, a corporation is subject to an alternative minimum tax ("AMT") which is payable, in addition to all other tax liabilities, to the extent that it exceeds the corporation's regular income tax liability. Alternative minimum taxable income ("AMTI") is the corporation's taxable income increased by the corporation's tax preferences and adjusted by determining the tax treatment of certain items in a manner which negates the deferral of income resulting from the regular tax treatment of those items. For a corporation, the amount of AMT paid in a year may be carried forward as a credit and used to reduce the corporation's regular tax liability (but not below the corporation's tentative minimum tax for the year).

One of the adjustments that is made to taxable income to arrive at AMTI relates to depreciation. Depreciation on most personal property to which the modified ACRS system adopted in 1986 applies is calculated using the 150-percent declining balance

method (switching to straight line in the year necessary to maximize the deduction) over the life described in Code section 168(g) (generally the ADR class life of the property).

For taxable years beginning after 1989, AMTI is increased by an amount equal to 75 percent of the amount by which adjusted current earnings ("ACE") exceeds AMTI (as determined before this adjustment). The ACE adjustment replaced the book-income adjustment applicable to tax years 1987 through 1989. In general, ACE equals AMTI with additional adjustments that generally follow the rules presently applicable to corporations in computing their earnings and profits. For purposes of ACE, depreciation is computed using the straight-line method over the class life of the property. Thus, a corporation generally must make two depreciation calculations for purposes of the AMT—once using the 150-percent declining balance method and again using the straight-line method.

House Bill

Effective for property placed in service in taxable years beginning after the date of enactment, the House bill would eliminate the depreciation component of ACE for corporate AMT purposes. Thus, in computing ACE, a corporation would use the same depreciation methods and lives that it uses in computing AMTI (generally, the 150-percent declining balance method for tangible personal property).

Effective date.—The provision is effective for property placed in service in taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. *Exclusion for seed capital gain of individuals from certain small business stock*

Present Law

Ordinary income of an individual is taxed at a maximum marginal rate of 31 percent. Net capital gain of an individual is taxed at the same rates applicable to ordinary income, subject to a maximum marginal rate of 28 percent.

The Tax Reform Act of 1986 repealed a provision allowing a noncorporate taxpayer a deduction for 60 percent of its net capital gain for the taxable year.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that taxpayers (other than C corporations) are allowed a capital gains exclusion for gain realized

on the sale or exchange of certain small business stock held for more than five years. The exclusion is 50% for stock held for more than five years, 60% for more than six years, 70% for more than seven years, 80% for more than eight years, 90% for more than nine years, and 100% for more than ten years.

In order to qualify for the exclusion, the stock must be that of a domestic corporation (other than a corporation engaged in certain disqualified activities), the corporation must satisfy an active business test, the basis of the corporation's assets must not exceed $5 million, and the stock must be originally issued to the taxpayer.

The exclusion is not a preference for purposes of the alternative minimum tax.

Effective date.—Stock issued six months after the date of enactment. In addition, taxpayers can elect to mark to market appreciated small business stock issued before the effective date in order to qualify future gain from the sale of such stock for the exclusion.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

3. Employer tax credit for FICA paid on tip income

PRESENT LAW

Under present law, all employee tip income is treated as employer-provided wages for purposes of the Federal Unemployment Tax Act (FUTA) and the Federal Insurance Contributions Act (FICA). For purposes of the minimum wage provisions of the Fair Labor Standards Act (FLSA), reported tips are treated as employer-provided wages to the extent they do not exceed one-half of such minimum wage.

HOUSE BILL

The House bill provides a business tax credit (sec. 38) in an amount equal to the employer's FICA tax obligation (7.65 percent) attributable to reported tips in excess of those treated as wages for purposes of satisfying the minimum wage provisions of the FLSA. To prevent double dipping, no deduction is allowed for any amount taken into account in determining the credit. The bill prohibits carryback of unused FICA credits (sec. 39) to a taxable year ending before the date of enactment.

Effective date.—Tips received and wages paid after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the senate amendment.

Effective date.—Taxes paid after December 31, 1992.

III. OFFSETTING REVENUE INCREASES

A. General Provisions

1. Mark to market accounting method for dealers in securities

Present Law

A taxpayer that is a dealer in securities is required for Federal income tax purposes to maintain an inventory of securities held for sale to customers. A dealer in securities is allowed for Federal income tax purposes to determine (or value) the inventory of securities held for sale based on: (1) the cost of the securities; (2) the lower of the cost or market value of the securities; or (3) the market value of the securities.

If the inventory of securities is determined based on cost, unrealized gains and losses with respect to the securities are not taken into account for Federal income tax purposes. If the inventory of securities is determined based on the lower of cost or market value, unrealized losses (but not unrealized gains) with respect to the securities are taken into account for Federal income tax purposes. If the inventory of securities is determined based on market value, both unrealized gains and losses with respect to the securities are taken into account for Federal income tax purposes.

For financial accounting purposes, the inventory of securities generally is determined based on market value.

House Bill

In general

The House bill provides two general rules (the "mark-to-market rules") that apply to certain securities that are held by a dealer in securities. First, any such security that is inventory in the hands of the dealer is required to be included in inventory at its fair market value. Second, any such security that is not inventory in the hands of the dealer and that is held as of the close of any taxable year is treated as sold by the dealer for its fair market value on the last business day of the taxable year and any gain or loss is required to be taken into account by the dealer in determining gross income for that taxable year.[1]

If gain or loss is taken into account with respect to a security by reason of the second mark-to-market rule, then the amount of gain or loss subsequently realized as a result of a sale, exchange, or other disposition of the security, or as a result of the application of the mark-to-market rules, is to be appropriately adjusted to reflect such gain or loss. In addition, the bill authorizes the Treasury Department to promulgate regulations that provide for the application of the second mark-to-market rule at times other than the close of a taxable year or the last business day of a taxable year.

The mark-to-market rules described above apply only for purposes of determining the amount of gain or loss that is taken into

[1] For purposes of this provision, a security is treated as sold to a person that is not related to the dealer even if the security is a contract between the dealer and a related person. Thus, for example, sections 267 and 707(b) of the Code are not to apply to any loss that is required to be taken into account under this provision.

account by a dealer in securities for any taxable year. Thus, for example, the mark-to-market rules do not apply in determining the character of any gain or loss and do not begin a new holding period for any security.[2] As a further example, the mark-to-market rules do not apply in determining whether gain or loss is recognized by any other taxpayer that may be a party to a contract with a dealer in securities.

Definitions

A dealer in securities is defined as any taxpayer that either (1) regularly purchases securities from, or sells securities to, customers in the ordinary course of a trade or business, or (2) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

A security is defined as: (1) any share of stock in a corporation; (2) any partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; (3) any note, bond, debenture, or other evidence of indebtedness; (4) any interest rate, currency, or equity notional principal contract (but not any other notional principal contract such as a notional principal contract that is based on the price of oil, wheat, or other commodity); and (5) any evidence of an interest in, or any derivative financial instrument in, a security described in (1) through (4) above or any currency, including any option, forward contract, short position, or any similar financial instrument in such a security or currency.

In addition, a security is defined to include any position if: (1) the position is not a security described in the preceding paragraph; (2) the position is a hedge with respect to a security described in the preceding paragraph; and (3) before the close of the day on which the position was acquired or entered into (or such other time as the Treasury Department may specify in regulations), the position is clearly identified in the dealer's records as a hedge with respect to a security described in the preceding paragraph. A security, however, is not to include a contract to which section 1256(a) of the Code applies.

A hedge is defined as any position that reduces the dealer's risk of interest rate or price changes or currency fluctuations, including any position that is reasonably expected to become a hedge within 60 days after the acquisition of the position.

Exceptions to the mark-to-market rules

Notwithstanding the definition of security, the mark-to-market rules generally do not apply to: (1) any security that is held for investment; [3] (2) any evidence of indebtedness that is acquired (in-

[2] For purposes of determining whether capital gain or loss that is recognized by reason of the mark-to-market rules is short-term or long-term, the holding period is treated as ending on the date that the security is treated as sold under the mark-to-market rules. Thus, for example, if, on August 1, 1992, a calendar year securities dealer acquires a security which is a capital asset subject to the mark-to-market rules, the amount of any gain or loss recognized on December 31, 1992, by reason of the mark-to-market rules would be short-term gain or loss. If such security continues to be held on December 31, 1993, the amount of gain or loss recognized by reason of the mark-to-market rules would be long-term gain or loss.

[3] To the extent provided in regulations to be promulgated by the Treasury Department, the exception to the mark-to-market rules for a security that is held for investment is not to apply

Continued

cluding originated) by a dealer in the ordinary course of a trade or business of the dealer but only if the evidence of indebtedness is not held for sale; (3) any security which is a hedge with respect to a security that is not subject to the mark-to-market rules (*i.e.*, any security that is a hedge with respect to a security held for investment or that is a hedge with respect to an evidence of indebtedness described in (2)); and (4) any security which is a hedge with respect to a position, right to income, or a liability that is not a security in the hands of the taxpayer.[4]

The exceptions to the mark-to-market rules for certain hedges do not apply to any security that is held by a taxpayer in its capacity as a dealer in securities, except as otherwise provided in regulations to be promulgated by the Treasury Department. Thus, except as otherwise provided in regulations to be promulgated by the Treasury Department, the exceptions to the mark-to-market rules for certain hedges do not apply to (1) any security that is held for sale in the ordinary course of a trade or business, or (2) any security that is entered into with customers in the ordinary course of a trade or business.

In addition, the exceptions to the mark-to-market rules do not apply unless, before the close of the day on which the security (including any evidence of indebtedness) is acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations),[5] the security is clearly identified in the dealer's records as being described in one of the exceptions listed above.[6]

It is anticipated that the identification rules with respect to hedges will be applied in such a manner as to minimize the imposition of additional accounting burdens on dealers in securities. For example, it is understood that certain dealers in securities use accounting systems which treat certain transactions entered into between separate business units as if such transactions were entered

---

to any notional principal contract or any derivative financial instrument that is held by a dealer in such securities.

[4] For purposes of the mark-to-market rules, debt issued by a taxpayer is not a security in the hands of such taxpayer.

[5] It is anticipated that the Treasury regulations will permit a floor specialist to identify a security as held for investment before the close of the seventh business day following the day that the security is acquired (see sec. 1236(d)). In addition, it is anticipated that the Treasury regulations will permit a dealer that originates evidences of indebtedness in the ordinary course of a trade or business to identify such evidences of indebtedness as not held for sale based on the accounting practices of the dealer but in no event later than the date that is 30 days after the date that any such evidence of indebtedness is originated. Further, it is anticipated that the Treasury regulations will permit a dealer that enters into commitments to acquire mortgages to identify such commitments as being held for investment if the dealer acquires the mortgages and holds the mortgages as investments. It is anticipated that this identification of commitments to acquire mortgages will occur within a reasonable period after the acquisition of the mortgages but in no event later than the date that is 30 days after the date that the mortgages are acquired.

[6] A security is to be treated as clearly identified in a dealer's records as being described in one of the exceptions listed above if all of securities of the taxpayer that are not so described are clearly identified in the dealer's records as not being described in such exception.

For example, assume that, in the ordinary course of its trade or business, a bank originates loans that are sold if the loans satisfy certain conditions. In addition, assume that (1) the bank determines whether a loan satisfies the conditions within 30 days after the loan is made, and (2) if a loan satisfies the conditions for sale, the bank records the loan in a separate account on the date that the determination is made. For purposes of the bill, the bank is a dealer in securities with respect to the loans that it holds for sale. In addition, by identifying these loans as held for sale, the bank is considered to have identified all other loans as not held for sale. Consequently, the loans that are not held for sale are not subject to the mark-to-market rules.

into with unrelated third parties. It is anticipated that for purposes of the mark-to-market rules, such an accounting system generally will provide an adequate identification of hedges with third parties.

In addition to clearly identifying a security as qualifying for one of the exceptions to the mark-to-market rules listed above, a dealer must continue to hold the security in a capacity that qualifies the security for one of the exceptions listed above. If at any time after the close of the day on which the security was acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations), the security is not held in a capacity that qualifies the security for one of the exceptions listed above, then the mark-to-market rules are to apply to any changes in value of such security that occur after the security no longer qualifies for an exception.[7]

Improper identification

The bill provides that if (1) a dealer identifies a security as qualifying for an exception to the mark-to-market rules but the security does not qualify for that exception, or (2) a dealer fails to identify a position that is not a security as a hedge of a security but the position is a hedge of a security, then the mark-to-market rules are to apply to any such security or position, except that loss is to be recognized under the mark-to-market rules prior to the disposition of the security or position only to the extent of gain previously recognized under the mark-to-market rules (and not previously taken into account under this provision) with respect to the security or position.

Other rules

The bill provides that the uniform cost capitalization rules of section 263A of the Code and the rules of section 263(g) of the Code that require the capitalization of certain interest and carrying charges in the case of straddles do not apply to any security to which the mark-to-market rules apply because the fair market value of a security should include the costs that the dealer would otherwise capitalize.

In addition, the bill provides that (1) the mark-to-market rules do not apply to any section 988 transaction (generally, a foreign currency transaction) that is part of a section 988 hedging transaction, and (2) the determination of whether a transaction is a section 988 transaction is to be made without regard to whether the transaction would otherwise be mark-to-market under the bill.

The bill also authorizes the Treasury Department to promulgate regulations which provide for the treatment of a hedge that reduce a dealer's risk of interest rate or price changes or currency fluctuations with respect to securities that are subject to the mark-to-market rules as well as with respect to securities, positions, rights to income, or liabilities that are not subject to the mark-to-market rules. It is anticipated that the Treasury regulations may allow taxpayers to treat any such hedge as not subject to the mark-

[7] Any gain or loss that is attributable to the period that the security was not subject to the mark-to-market rules generally is to be taken into account at the time that the security is actually sold (rather than treated as sold by reason of the mark-to-market rules).

to-market rules provided that such treatment is consistently followed from year to year.

Finally, the bill authorizes the Treasury Department to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the bill,including rules to prevent the use of year-end transfers, related persons, or other arrangements to avoid the provisions of the bill.

Effective Date

The provision applies to taxable years ending on or after December 31, 1992. A taxpayer that is required to change its method of accounting to comply with the requirements of the provision is treated as having initiated the change in method of accounting and as having received the consent of the Treasury Department to make such change.

The net amount of the section 481(a) adjustment is to be taken into account over a 10-taxable year period beginning with the first taxable year ending on or after December 31, 1992, to the extent that such amount does not exceed the net amount of the section 481(a) adjustment that would have been determined had the change in method of accounting occurred for the last taxable year beginning before March 20, 1992. The net amount of such section 481(a) adjustment is to be taken into account as follows: (1) 17 percent for the first taxable year ending on or after December 31, 1992; (2) 10 percent for each of the seven succeeding taxable years; and (3) 6.5 percent for the final two taxable years in the 10-taxable year period.

The excess (if any) of (1) the net amount of the section 481(a) adjustment for the first taxable year ending on or after December 31, 1992, over (2) the net amount of the section 481(a) adjustment that would have been determined had the change in method of accounting occurred for the last taxable year beginning before March 20, 1992, is to be taken into account ratably over a 4-taxable year period beginning with the first taxable year ending on or after December 31, 1992.

The principles of section 8.03 (1) and (2) of Rev. Proc. 92–20, 1992–12 I.R.B. 10, are to apply to the section 481(a) adjustment. It is anticipated that section 8.03(1) of Rev. Proc. 92–20 will be applied by taking into account all securities of a dealer that are subject to the mark-to-market rules (including those securities that are not inventory in the hands of the dealer). In addition, it is anticipated that net operating losses will be allowed to offset the section 481(a) adjustment, tax credit carryforwards will be allowed to offset any tax attributable to the section 481(a) adjustment, and, for purposes of determining liability for estimated taxes, the section 481(a) adjustment will be taken into account ratably throughout the taxable year in question.

In determining the amount of the section 481(a) adjustment for taxable years beginning before the date of enactment of the mark-to-market rules, the identification requirements are to be applied in a reasonable manner. It is anticipated that any security that was identified as being held for investment under section 1236(a) of the Code as of the last day of the taxable year preceding the taxable year of change is to be treated as held for investment for pur-

poses of the mark-to-market rules. It is also anticipated that any other security that was held as of the last day of the taxable year preceding the taxable year of change is to be treated as properly identified if the dealer's records as of such date support such identification.[8]

Finally, no addition to tax is to be made under section 6654 or 6665 of the Code for any underpayment of estimated tax that is due before the date of enactment of the mark-to-market rules to the extent that the underpayment is attributable to the enactment of the mark-to-market rules. The amount of the first required payment of estimated tax that is due on or after the date of enactment of the mark-to-market rules is to be increased by the amount of estimated tax that was not previously paid by reason of the preceding sentence.

Senate Amendment

In general

The Senate amendment provides two general rules (the "mark-to-market rules") that apply to certain securities that are held by a dealer in securities. First, any such security that is inventory in the hands of the dealer is required to be included in inventory at its fair market value. Second, any such security that is not inventory in the hands of the dealer and that is held as of the close of any taxable year is treated as sold by the dealer for its fair market value on the last business day of the taxable year and any gain or loss is required to be taken into account by the dealer in determining gross income for that taxable year.[9]

If gain or loss is taken into account with respect to a security by reason of the second mark-to-market rule, then the amount of gain or loss subsequently realized as a result of a sale, exchange, or other disposition of the security, or as a result of the application of the mark-to-market rules, is to be appropriately adjusted to reflect such gain or loss. In addition, the Senate amendment authorizes the Treasury Department to promulgate regulations that provide for the application of the second mark-to-market rule at times other than the close of a taxable year or the last business day of a taxable year.

The mark-to-market rules do not apply for purposes of determining the holding period of any security. In addition, the mark-to-market rules do not apply in determining whether gain or loss is recognized by any other taxpayer that may be a party to a contract with a dealer in securities.

---

[8] In addition, it is anticipated that in order for any security that is held on the date of enactment of the mark-to-market rules to qualify for one of the exceptions to the mark-to-market rules, the security must be identified as being described in one of the exceptions within a reasonable period after the date of enactment but in no event later than the date that is 30 days after the date of enactment.

[9] For purposes of this provision, a security is treated as sold to a person that is not related to the dealer even if the security is itself a contract between the dealer and a related person. Thus, for example, sections 267 and 707(b) of the Code are not to apply to any loss that is required to be taken into account under this provision.

Character of gain or loss

Any gain or loss taken into account under the provision (or any gain or loss recognized with respect to a security that would be subject to the provision if held at the end of the year) generally is treated as ordinary gain or loss. This character rule does not apply to any gain or loss allocable to any period during which the security (1) is a hedge of a position, right to income, or a liability that is not subject to a mark-to-market rule under the provision, or (2) is held by the taxpayer other than in its capacity as a dealer in securities. In addition, the character rule does not apply to any security that is improper identified (as described in detail below) by the taxpayer.

No inference is intended as to the character of any gain or loss recognized in taxable years prior to the enactment of this provision or any gain or loss recognized with respect to any property to which this character rule does not apply.

Definitions

A dealer in securities is defined as any taxpayer that either (1) regularly purchases securities from, or sells securities to, customers in the ordinary course of a trade or business, or (2) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

A security is defined as: (1) any share of stock in a corporation; (2) any partnership or beneficial ownership interest in a widely-held or publicly-traded partnership or trust; (3) any note, bond, debenture, or other evidence of indebtedness; (4) any interest rate, currency, or equity notional principal contract (but not any other notional principal contract such as a notional principal contract that is based on the price of oil, wheat, or other commodity); and (5) any evidence of an interest in, or any derivative financial instrument in any currency or in a security described in (1) through (4) above, including any option, forward contract, short position, or any similar financial instrument in such a security or currency.

In addition, a security is defined to include any position if: (1) the position is not a security described in the preceding paragraph; (2) the position is a hedge with respect to a security described in the preceding paragraph; and (3) before the close of the day on which the position was acquired or entered into (or such other time as the Treasury Department may specify in regulations), the position is clearly identified in the dealer's records as a hedge with respect to a security described in the preceding paragraph.

A security, however, is not to include a contract to which section 1256(a) of the Code applies, unless such contract is a hedge of a security to which the provision applies. The special character rule of the Senate amendment (rather than the special character rule of section 1256(a)) will apply to any such contract that is a hedge of a security to which the provision applies.

A hedge is defined as any position that reduces the dealer's risk of interest rate or price changes or currency fluctuations, including any position that is reasonably expected to become a hedge within 60 days after the acquisition of the position.

Exceptions to the mark-to-market rules

Notwithstanding the definition of security, the mark-to-market rules generally do not apply to: (1) any security that is held for investment; [10] (2) any evidence of indebtedness that is acquired (including originated) by a dealer in the ordinary course of its trade or business but only if the evidence of indebtedness is not held for sale; (3) any security that is acquired by a floor specialist of a national securities exchange or a market maker of the National Association of Security Dealers Automated Quotation System, in connection with the specialist's or market maker's duties as a specialist or market maker; [11] (4) any security which is a hedge with respect to a security that is not subject to the mark-to-market rules (i.e., any security that is a hedge with respect to (a) a security held for investment, (b) an evidence of indebtedness described in (2) or (c) a security of a floor specialist or a market maker described in (3)); and (5) any security which is a hedge with respect to a position, right to income, or a liability that is not a security in the hands of the taxpayer.[12]

To the extent provided in regulations to be promulgated by the Treasury Department, the exceptions to the mark-to-market rules for certain hedges do not apply to any security that is held by a taxpayer in its capacity as a dealer in securities. Thus, regulations may provide that the exceptions to the mark-to-market rules for certain hedges do not apply to securities that are entered into with customers in the ordinary course of a trade or business. A hedge that is identified as not subject to the mark-to-market rules will not be considered to be held for sale in the ordinary course of a trade or business.

In addition, the exceptions to the mark-to-market rules do not apply unless, before the close of the day on which the security (including any evidence of indebtedness) is acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations),[13] the security is clearly identified in the

---

[10] To the extent provided in regulations to be promulgated by the Treasury Department, the exception to the mark-to-market rules for a security that is held for investment is not to apply to any notional principal contract or any derivative financial instrument that is held by a dealer in such securities.

[11] A floor specialist is defined as a person who (1) is a member of a national securities exchange, (2) is registered as a specialist with the exchange, and (3) meets the requirements for specialists established by the Securities and Exchange Commission.

A market maker is defined as a person who (1) is registered as a market maker with the National Association of Security Dealers, with respect to a security that is included in National Association of Security Dealers Automated Quotation System (NASDAQ), and (2) as of the last day of the taxable year, has been actively and regularly engaged as a market maker in the security for the lesser of (a) two years or (b) the period beginning 61 days after the security was first included on the NASDAQ and ending on such last day.

[12] For purposes of the mark-to-market rules, debt issued by a taxpayer is not a security in the hands of such taxpayer.

[13] It is anticipated that the Treasury regulations will permit a dealer that originates evidences of indebtedness in the ordinary course of a trade or business to identify such evidences of indebtedness as not held for sale based on the accounting practices of the dealer but in no event later than the date that is 30 days after the date that any such evidence of indebtedness is originated. Further, it is anticipated that the Treasury regulations will permit a dealer that enters into commitments to acquire mortgages to identify such commitments as being held for investment if the dealer acquires the mortgages and holds the mortgages as investments. It is anticipated that this identification of commitments to acquire mortgages will occur within a reasonable period after the acquisition of the mortgages but in no event later than the date that is 30 days after the date that the mortgages are acquired.

dealer's records as being described in one of the exceptions listed above.[14]

It is anticipated that the identification rules with respect to hedges will be applied in such a manner as to minimize the imposition of additional accounting burdens on dealers in securities. For example, it is understood that certain dealers in securities use accounting systems which treat certain transactions entered into between separate business units as if such transactions were entered into with unrelated third parties. It is anticipated that for purposes of the mark-to-market rules, such an accounting system generally will provide an adequate identification of hedges with third parties.

In addition to clearly identifying a security as qualifying for one of the exceptions to the mark-to-market rules listed above, a dealer must continue to hold the security in a capacity that qualifies the security for one of the exceptions listed above. If at any time after the close of the day on which the security was acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations), the security is not held in a capacity that qualifies the security for one of the exceptions listed above, then the mark-to-market rules are to apply to any changes in value of such security that occur after the security no longer qualifies for an exception.[15]

Improper identification

The Senate amendment provides that if (1) a dealer identifies a security as qualifying for an exception to the mark-to-market rules but the security does not qualify for that exception, or (2) a dealer fails to identify a position that is not a security as a hedge of a se-

[14] A security is to be treated as clearly identified in a dealer's records as being described in one of the exceptions listed above if all of securities of the taxpayer that are not so described are clearly identified in the dealer's records as not being described in such exception.

For example, assume that, in the ordinary course of its trade or business, a bank originates loans that are sold if the loans satisfy certain conditions. In addition, assume that (1) the bank determines whether a loan satisfies the conditions within 30 days after the loan is made, and (2) if a loan satisfies the conditions for sale, the bank records the loan in a separate account on the date that the determination is made. For purposes of the Senate amendment, the bank is a dealer in securities with respect to the loans that it holds for sale. In addition, by identifying these loans as held for sale, the bank is considered to have identified all other loans as not held for sale. Consequently, the loans that are not held for sale are not subject to the mark-to-market rules.

[15] Any gain or loss that is attributable to the period that the security was not subject to the mark-to-market rules generally is to be taken into account at the time that the security is actually sold (rather than treated as sold by reason of the mark-to-market rules).

Conversely, different rules apply to a security that originally is held by the taxpayer in a capacity that subjects the security to the mark-to-market rules, but later becomes otherwise eligible for an exception from the mark-to-market rules. For example, assume that a security to which the mark-to-market rules apply is hedged (and thus the hedge is subject to the mark-to-market rules) and the security (but not the hedge) is sold before year end. In such case, the "naked" hedge generally will be subject to the mark-to-market rules at the year end.

However, the Treasury Department has authority to issue regulations that would allow the taxpayer to identify, on the date the security is sold, the "naked" hedge as a security to which one of the exceptions to the mark-to-market rules (assuming the "naked" hedge otherwise qualifies for the exception). In making this identification, it is anticipated that the taxpayer would be required to apply the mark-to-market rules to the "naked" hedge as of the date of the sale of the security, take any resulting gain or loss into account for the taxable year of sale, and treat the "naked" hedge as a security to which the exceptions to the mark-to-market rules apply.

Whether or not the taxpayer is allowed under regulations to make the identification described above (and whether or not the taxpayer makes the identification), any gain or loss attributable to the period after the date of sale of the security will not be subject to the special character rule of the Senate amendment if the hedge is not held by the taxpayer in its capacity as a dealer during such period. Thus, if the "naked" hedge is a capital asset in the hands of the taxpayer, any gain or loss recognized with respect to the "naked" hedge that is attributable to the period after the date of sale of the security will be capital gain or loss.

curity but the position is a hedge of a security, then the mark-to-market rules are to apply to any such security or position, except that loss is to be recognized under the mark-to-market rules prior to the disposition of the security or position only to the extent of gain previously recognized under the mark-to-market rules (and not previously taken into account under this provision) with respect to the security or position.

Other rules

The Senate amendment provides that the uniform cost capitalization rules of section 263A of the Code and the rules of section 263(g) of the Code that require the capitalization of certain interest and carrying charges in the case of straddles do not apply to any security to which the mark-to-market rules apply because the fair market value of a security should include the costs that the dealer would otherwise capitalize.

In addition, a security subject to the provision is not to be treated as sold and reacquired for purposes of section 1091 of the Code. Section 1092 of the Code will apply to any loss recognized under the mark-to-market rules (but will have no effect if all the offsetting positions that make up the straddle are subject to the mark-to-market rules).

Furthermore, the Senate amendment provides that (1) the mark-to-market rules do not apply to any section 988 transaction (generally, a foreign currency transaction) that is part of a section 988 hedging transaction, and (2) the determination of whether a transaction is a section 988 transaction is to be made without regard to whether the transaction would otherwise be marked-to-market under the Senate amendment.

The Senate amendment also authorizes the Treasury Department to promulgate regulations which provide for the treatment of a hedge that reduce a dealer's risk of interest rate or price changes or currency fluctuations with respect to securities that are subject to the mark-to-market rules as well as with respect to securities, positions, rights to income, or liabilities that are not subject to the mark-to-market rules. It is anticipated that the Treasury regulations may allow taxpayers to treat any such hedge as not subject to the mark-to-market rules provided that such treatment is consistently followed from year to year.

Finally, the Senate amendment authorizes the Treasury Department to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the amendment, including rules to prevent the use of year-end transfers, related persons, or other arrangements to avoid the provisions of the amendment. Such authority includes coordinating the mark-to-market rules with the original issue discount rules.

Effective Date

The provision applies to taxable years ending on or after December 31, 1992. A taxpayer that is required to change its method of accounting to comply with the requirements of the provision is treated as having initiated the change in method of accounting and as having received the consent of the Treasury Department to make such change.

The net amount of the section 481(a) adjustment is to be taken into account ratably over a 7-taxable year period beginning with the first taxable year ending on or after December 31, 1992, to the extent that such amount does not exceed the net amount of the section 481(a) adjustment that would have been determined had the change in method of accounting occurred for the last taxable year beginning before March 20, 1992.

The excess (if any) of (1) the net amount of the section 481(a) adjustment for the first taxable year ending on or after December 31, 1992, over (2) the net amount of the section 481(a) adjustment that would have been determined had the change in method of accounting occurred for the last taxable year beginning before March 20, 1992, is to be taken into account ratably over a 4-taxable year period beginning with the first taxable year ending on or after December 31, 1992.

The principles of section 8.03(1) and (2) of Rev. Proc. 92-20, 1992-12 I.R.B. 10, are to apply to the section 481(a) adjustment. It is anticipated that section 8.03(1) of Rev. Proc. 92-20 will be applied by taking into account all securities of a dealer that are subject to the mark-to-market rules (including those securities that are not inventory in the hands of the dealer). In addition, it is anticipated that net operating losses will be allowed to offset the section 481(a) adjustment, tax credit carryforwards will be allowed to offset any tax attributable to the section 481(a) adjustment, and, for purposes of determining liability for estimated taxes, the section 481(a) adjustment will be taken into account ratably throughout the taxable year in question.

In determining the amount of the section 481(a) adjustment for taxable years beginning before the date of enactment of the mark-to-market rules, the identification requirements are to be applied in a reasonable manner. It is anticipated that any security that was identified as being held for investment under section 1236(a) of the Code as of the last day of the taxable year preceding the taxable year of change is to be treated as held for investment for purposes of the mark-to-market rules. It is also anticipated that any other security that was held as of the last day of the taxable year preceding the taxable year of change is to be treated as properly identified if the dealer's records as of such date support such identification.[16]

Finally, no addition to tax is to be made under section 6654 or 6665 of the Code for any underpayment of estimated tax that is due before the date of enactment of the mark-to-market rules to the extent that the underpayment is attributable to the enactment of the mark-to-market rules. The amount of the first required payment of estimated tax that is due on or after the date of enactment of the mark-to-market rules is to be increased by the amount of estimated tax that was not previously paid by reason of the preceding sentence.

[16] In addition, it is anticipated that in order for any security that is held on the date of enactment of the mark-to-market rules to qualify for one of the exceptions to the mark-to-market rules, the security must be identified as being described in one of the exceptions within a reasonable period after the date of enactment but in no event later than the date that is 30 days after the date of enactment.

Conference Report

The conference agreement generally follows the Senate amendment with the following modifications.

The conference agreement deletes the exception for any security that is acquired by a floor specialist of a national securities exchange or a market maker of the National Association of Security Dealers Automated Quotation System, in connection with the specialist's or market maker's duties as a specialist or market maker.

The Senate amendment provides an exception to the mark-to-market rules for any evidence of indebtedness that is acquired (including originated) by a dealer in the ordinary course of its trade or business but only if the evidence of indebtedness is not held for sale. The conference agreement provides that the exception also will apply to any obligation to acquire any evidence of indebtedness described in the preceding sentence if such obligation is entered into in the ordinary course of the taxpayer's trade or business and is not held for sale.

In addition, under the conference agreement, the special character rule does not apply to any gain or loss with respect to any security allocable to any period during which the security is held by the taxpayer other than in connection with its activities as a dealer in securities. Thus, the special character rule generally applies to an instrument or position that is held as a hedge of a security to which the special character rule applies (so long as the hedge also meets the other requirements of the special character rule.)

The conferees understand that hedging transactions are also important to the management of risks by businesses that are not subject to these mark-to-market rules. The conferees also understand that there has been increased uncertainty concerning the tax treatment of such hedging transactions following a decision by the Supreme Court in 1988, *Arkansas Best Corp. v. Commissioner*, 485 U.S. 212 (1988). That decision held that a taxpayer could not claim an ordinary loss from the sale of subsidiary stock that purportedly had been acquired for the purpose of preserving the business reputation of the taxpayer. The decision's scope, and its effect on hedging transactions, is unclear.

The level of uncertainty regarding the tax treatment of hedging transactions is a matter of concern to the conferees. Such uncertainty may have a dampening effect on taxpayers entering into a variety of desirable business hedging transactions. The conferees believe this is a significant issue and hope that appropriate steps can be taken to address this matter.

Finally, the conference agreement provides that the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Code is to be taken into account ratably over a 4-taxable year period beginning with the first taxable year ending on or after December 31, 1992.

2. Tax treatment of certain FSLIC financial assistance

PRESENT LAW AND BACKGROUND

A taxpayer may claim a deduction for a loss on the sale or other disposition of property only to the extent that the taxpayer's adjusted basis for the property exceeds the amount realized on the disposition and the loss is not compensated for by insurance or otherwise (sec. 165 of the Code). In the case of a taxpayer on the specific charge-off method of accounting for bad debts, a deduction is allowable for the debt only to the extent that the debt becomes worthless and the taxpayer does not have a reasonable prospect of being reimbursed for the loss. If the taxpayer accounts for bad debts on the reserve method, the worthless portion of a debt is charged against the taxpayer's reserve for bad debts, potentially increasing the taxpayer's deduction for an addition to this reserve.

A special statutory tax rule, enacted in 1981, excluded from a thrift institution's income financial assistance received from the Federal Savings and Loan Insurance Corporation (FSLIC), and prohibited a reduction in the tax basis of the thrift institution's assets on account of the receipt of the assistance. Under the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), taxpayers generally were required to reduce certain tax attributes by one-half the amount of financial assistance received from the FSLIC pursuant to certain acquisitions of financially troubled thrift institutions occurring after December 31, 1988. These special rules were repealed by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), but still apply to transactions that occurred before May 10, 1989.

In September 1990, the Resolution Trust Corporation (RTC), in accordance with the requirements of FIRREA, issued a report to Congress and the Oversight Board of the RTC on certain FSLIC-assisted transactions (the "1988/89 FSLIC transactions"). The report recommended further study of the covered loss and other tax issues relating to these transactions. A March 4, 1991 Treasury Department report on tax issues relating to the 1988/89 FSLIC transactions concluded that deductions should not be allowed for losses that are reimbursed with exempt FSLIC assistance.

HOUSE BILL

Any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of an asset shall be taken into account as compensation for such loss for purposes of section 165 of the Code. Any FSLIC assistance with respect to any debt shall be taken into account for purposes of determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts. For this purpose, FSLIC assistance means any assistance or right to assistance with respect to a domestic building and loan association (as defined in section 7701(a)(19) of the Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act or section 2 of the Federal Home Loan Bank Act (or under any similar provision of law).

The provision does not apply to any financial assistance to which the amendments made by section 1401(a)(3) of FIRREA apply.

No inference is intended as to prior law or as to the treatment of any item to which this provision does not apply.

Effective date.—The provision applies to financial assistance credited on or after March 4, 1991, with respect to (1) assets disposed of and charge-offs made in taxable years ending on or after March 4, 1991; and (2) assets disposed of and charge-offs made in taxable years ending before March 4, 1991, but only for purposes of determining the amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment provides that no addition to tax is to be made under section 6654 or 6665 of the Code for any underpayment of estimated tax that is due before the date of enactment of the provision to the extent that the underpayment is attributable to the treatment of any FSLIC assistance credited before such date in manner other than that provided by this provision. The amount of the first required payment of estimated tax that is due on or after the date of enactment of the provision is to be increased by the amount of estimated tax that was not previously paid by reason of the preceding sentence. However, in providing this relief, no inference is intended as to prior law, the effect of the provision on prior law, or the treatment of any item to which this provision does not apply.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Require taxpayers to include rental value of residence in income without regard to period of rental.

PRESENT LAW

Gross income for purposes of the Internal Revenue Code generally includes all income from whatever source derived, including rents. The Code (sec. 280A(g)) provides a *de minimis* exception to this rule where a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year. In this case, the income from such rental is not included in gross income and no deductions arising from such rental use are allowed as a deduction.

HOUSE BILL

No provision (However H.R. 2735 as passed by the House includes a provision similar to the Senate amendment.).

SENATE AMENDMENT

Generally, the Senate amendment repeals the 15-day rule of 280A(g) except that if the taxpayer rents (at a rate not greater

than the reasonable commercial rate) his or her principal residence for less than 15 days for the purpose of providing accommodations to visitors to an event for which commercial accommodations can provide no more than one-half of the needed accommodations, then the current-law exclusion (and denial of deductions) applies.

Effective date.—The provision applies to taxable years beginning after date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Increase recovery period for depreciation of nonresidential real property

PRESENT LAW

A taxpayer is allowed to recover, through annual depreciation allowances, the cost or other basis of nonresidential real property (other than land) that is used in a trade or business or that is held for the production of rental income. For regular tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year generally is determined by using the straight-line method and a recovery period of 31.5 years. For alternative minimum tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year is determined by using the straight-line method and a recovery period of 40 years.

HOUSE BILL

The House bill requires the depreciation deduction allowed with respect to nonresidential real property for regular tax purposes to be determined by using a recovery period of 40 years. The House bill does not change the determination of the depreciation deduction allowed with respect to nonresidential real property for alternative minimum tax purposes.

Effective date.—The provision of the House bill relating to real property depreciation generally applies to property placed in service on or after June 25, 1992. The provision does not apply to property that is placed in service by a taxpayer before January 1, 1995, if (1) the taxpayer or a qualified person entered into a binding written contract to purchase or construct the property before June 25, 1992, or (2) construction of the property was commenced by or for the taxpayer or a qualified person before June 25, 1992. For this purpose, a qualified person is defined as any person who transfers his or her rights in such a contract or in the property to the taxpayer, but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment generally applies to property placed in service on or after July 28, 1992. The provision of the Senate amendment does not apply to property that is placed in service by

a taxpayer before January 1, 1995, if (1) the taxpayer or a qualified person entered into a binding written contract to purchase or construct the property before July 28, 1992, or (2) construction of the property was commenced by or for the taxpayer or a qualified person before July 28, 1992. For this purpose, a qualified person is defined as any person who transfers his or her rights in such a contract or in the property to the taxpayer, but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

The conferees intend that a contract is to be considered binding for purposes of the effective date if subject to a condition, as long as the condition is not within the control of either party to the agreement or a predecessor of either party to the agreement. Similarly, a commitment letter will not fail to constitute a binding contract merely because it is subject to the customary closing conditions, such as acceptable final documentation and opinions of counsel.

5. Deduction for moving expenses

PRESENT LAW

An employee or self-employed individual may claim a deduction from gross income for certain expenses incurred as a result of moving to a new residence in connection with beginning work at a new location (sec. 217). The deduction is not subject to the floor which generally limits a taxpayer's allowable miscellaneous itemized deductions only to those amounts which exceed 2 percent of his or her adjusted gross income. Any amount received directly or indirectly by such individual as a reimbursement of moving expenses must be included in the taxpayer's gross income as compensation (sec. 82). The taxpayer may offset this income by deducting the moving expenses that would otherwise qualify as deductible items under sec. 217.

Deductible moving expenses are the expenses of transporting the taxpayer and members of his household, as well as his household goods and personal effects, from the old to the new residence; the cost of meals and lodging en route; the expenses for pre-move househunting trips; temporary living expenses for up to 30 days in the general location of the new job; and certain expenses related to either the sale or settlement of a lease on the old residence or the purchase of a new residence in the general location of the new job.

The moving expense deduction is subject to a number of limitations. A maximum of $1,500 can be deducted for pre-move househunting and temporary living expenses in the general location of the new job. A maximum of $3,000 (reduced by any deduction claimed for househunting or temporary living expenses) can be deducted for certain qualified expenses for the sale and purchase of a residence or settlement of a lease. If both a husband and wife begin new jobs in the same general location, the move is treated as a single commencement of work. If a husband and wife file separate

returns, the maximum deductible amounts available to each is one-half the amounts otherwise allowed.

Also, in order for a taxpayer to claim a moving expense deduction, his new principal place of work has to be at least 35 miles farther from his former residence than was his former principal place of work (or his former residence, if he has no former place of work).

House Bill

Pre-move househunting and temporary living expenses

The $1,500 limit ($4,500 limit for foreign moves) on pre-move househunting and temporary living expenses in the general location of the new job is repealed. The $3,000 limit on the sum of pre-move househunting expenses, temporary living expenses, and qualified expenses for the sale and purchase of a residence or settlement of a lease is retained. For foreign moves, this latter limit is reduced to $5,000.

Overall cap on deductible expenses

An overall $5,000 cap is imposed on allowable moving expenses (including expenses subject to the limit for househunting, temporary living, and qualified settlement expenses) for each qualified move (including foreign moves).

Treatment of reimbursed expenses

To the extent that moving expenses are reimbursed and included in the gross income of the taxpayer under section 82, the taxpayer is allowed an above-the-line deduction in computing adjusted gross income under section 62.

Treatment of unreimbursed expenses

To the extent that moving expenses are unreimbursed, the deduction is made subject to the 2-percent floor on miscellaneous itemized deductions.

Deduction for expenses for the sale or purchase of a residence or settlement of a lease

No provision.

Deduction for certain meals and entertainment expenses

No provision.

Effective date.—The House bill is effective for taxable years beginning after December 31, 1992.

Senate Amendment

Pre-move househunting and temporary living expenses

No provision.

Overall cap on deductible expenses

The Senate amendment imposes an overall cap of $19,000 as imposed on otherwise allowable moving expenses.

Treatment of reimbursed expenses

No provision.

Treatment of unreimbursed expenses

No provision.

Deduction for expenses for the sale or purchase of a residence or the settlement of a lease

The Senate amendment denies the deduction for the expenses for the sale or purchase of a residence or the settlement of a lease.

Deduction for certain meals and entertainment expenses

The Senate amendment denies the deduction for the otherwise allowable expenses for meals and entertainment expenses.

Effective date.—Same as the House bill.

CONFERENCE AGREEMENT

Pre-move househunting and temporary living expenses

The conference agreement does not follow the House bill.

Overall cap on deductible expenses

The conference agreement provides for an overall cap of $10,000 on moving expenses and increases the mileage limit from 35 to 60 miles.

Treatment of reimbursed expenses

The conference agreement does not follow the House bill.

Treatment of unreimbursed expenses

The conference agreement does not follow the House bill.

Deduction for expenses for the sale or purchase of a residence or the settlement of a lease

The conference agreement follows the Senate amendment.

Deduction for certain meals and entertainment expenses

The conference agreement follows the Senate amendment.

Effective date.—The provisions are effective for taxable years beginning after December 31, 1992.

6. Classification of certain interests in corporations as stock or indebtedness

PRESENT LAW

There presently is no definition in the Internal Revenue Code or the income tax regulations which can be used to determine whether an interest in a corporation constitutes debt or equity for Federal income tax purposes. The characterization of an investment in a corporation as debt or equity for Federal income tax purposes generally is determined under principles developed in case law by reference to numerous factors intended to identify the economic substance of the investor's interest in the corporation.

HOUSE BILL

No provision in H.R. 11. However, section 3 of H.R. 5641 as passed by the House contains a provision similar to the Senate amendment.

SENATE AMENDMENT

The Senate amendment provides that the characterization (as of the time of issuance) of a corporate instrument as stock or debt by the corporate issuer is binding on the issuer and on all holders. This characterization, however, is not binding on the Secretary of the Treasury. Neither a holder nor an issuer is excused from any interest or penalties that might result under present law from an improper characterization.

Except as provided in regulations, a holder who treats such instrument in a manner inconsistent with such characterization must disclose the inconsistent treatment on such holder's tax return.

The Secretary of the Treasury is authorized to require such information as is deemed necessary to implement the provision.

Effective date.—Instruments issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the H.R. 5641 provision or the Senate amendment. However, the conference agreement on H.R. 776 includes the Senate amendment.

7. Treatment of pre-contribution gain in certain partnership redemptions

PRESENT LAW

If property contributed to a partnership by a partner is subsequently distributed to another partner within 5 years of the contribution, the contributing partner generally recognizes gain as if the property had been sold for its fair market value at the time of the distribution. Present law generally does not require a partner who contributes appreciated property to a partnership to recognize pre-contribution gain upon a subsequent distribution of other property to that partner even if the value of that other property exceeds the partner's basis in his partnership interest.

HOUSE BILL

The House bill requires a partner who contributes appreciated property to a partnership to include pre-contribution gain in income to the extent that the value of other property distributed by the partnership to that partner exceeds his adjusted basis in his partnership interest. Generally, the character of the gain is determined by reference to the character of the net pre-contribution gain. Appropriate basis adjustments are to be made in the basis of the distributee partner's interest in the partnership and the partnership's basis in the contributed property to take account of gain recognized by the distributee partner.

Effective date.—The provision applies to partnership distributions on or after June 25, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment. (However, the conference agreement on H.R. 776 includes the House bill and the Senate amendment.)

8. Deny deduction relating to travel expenses paid or incurred in connection with travel of taxpayer's spouse or dependents

PRESENT LAW

In general, a taxpayer is permitted a deduction for all ordinary and necessary expenses paid or incurred during the taxable year (1) in carrying on any trade or business and (2) in the case of an individual, for the production of income. Such deductible expenses may include reasonable travel expenses paid or incurred while away from home, such as transportation costs and the cost of meals and lodging.

In the case of ordinary and necessary business expenses, if a taxpayer travels to a destination and while at that destination engages in both business and personal activities, travel expenses to and from such destination are deductible only if the trip is related primarily to the taxpayer's trade or business. If the trip is primarily personal in nature, expenses while at the destination that are properly allocable to the taxpayer's trade or business are deductible even though the traveling expenses to and from the destination are not deductible (Treas. reg. sec. 1.162-2(b)(1)).

Under Treasury regulations, if the taxpayer's spouse accompanies the taxpayer on a business trip, expenses attributable to the spouse's travel are not deductible unless it is adequately shown that the spouse's presence on the trip has a bona fide business purpose (Treas. reg. sec. 1.162-2(c)). The performance of some incidental service by the spouse does not cause the expenses to qualify as deductible business expenses. Under the regulations, the same rules apply to any other members of the taxpayer's family who accompany the taxpayer on such a trip.

In general, business expenses other than unreimbursed employee business expenses are deductible above-the-line and are not subject to the 2-percent floor on miscellaneous itemized deductions. Expenses for the production of income other than rental or royalty income are generally deductible below-the-line (if the activity does not constitute a trade or business) and are subject to the 2-percent floor on miscellaneous itemized deductions.

Gross income does not include the value of a working condition fringe (sec. 132(d)). A "working condition fringe" is any property or service provided to an employee of an employer to the extent that if an employee paid for the property or service, the amount paid would be deductible as an ordinary and necessary business expense (sec. 162) or a depreciation expense (sec. 167).

HOUSE BILL

No provision.

SENATE AMENDMENT

The amendment denies a deduction for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying a person on business travel, unless (a) the spouse, dependent, or other individual accompanying the person is a bona fide employee of the person paying or reimbursing the expenses, (b) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and (c) the expenses of the spouse, dependent, or other individual would otherwise be deductible. No inference is intended as to the deductibility of these expenses under present law.

Effective date.—The provision is effective for amounts paid or incurred after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

9. Deny deduction for travel expenses paid or incurred in connection with employment lasting one year or more

PRESENT LAW

Unreimbursed ordinary and necessary travel expenses paid or incurred by an individual in connection with temporary employment away from home (e.g., transportation costs, and the cost of meals and lodging) are generally deductible, subject to the two-percent floor on miscellaneous itemized deductions. Travel expenses paid or incurred in connection with indefinite employment away from home, however, are not deductible.[1]

The position of the Internal Revenue Service as to whether employment is temporary or indefinite is as follows:

1. If a taxpayer anticipates employment to last for less than one year, whether such employment is temporary or indefinite will be determined on the basis of the facts and circumstances.

2. If a taxpayer anticipates employment to last for one year or more and that employment does, in fact, last for one year or more, there is a presumption that the employment is not temporary but rather is indefinite, and that the taxpayer is not away from home during the indefinite period of employment. However, under certain circumstances, this one-year presumption of indefiniteness may be rebutted where the employment is expected to, and does, last for one year or more, but less than two years.

3. An expected or actual stay of two years or longer will be considered an indefinite stay, regardless of any other facts and circumstances.[2]

---

[1] *Peurifoy v. Commissioner*, 358 U.S. 59 (1958), *aff'g*, 254 F.2d 483 (4th Cir. 1957), *rev'g*, 27 T.C. 149 (1957).

[2] Rev. Rul. 83-82, 1983-1 C.B. 45.

HOUSE BILL

No provision.

SENATE AMENDMENT

The amendment treats a taxpayer's employment away from home in a single location as indefinite rather than temporary if it lasts for one year or more. Thus, no deduction would be permitted for travel expenses paid or incurred in connection with such employment. As under present law, if a taxpayer's employment away from home in a single location lasts for less than one year, whether such employment is temporary or indefinite would be determined on the basis of the facts and circumstances.

Effective date.—The amendment is effective for costs paid or incurred after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment. (However, the conference agreement on H.R. 776 includes the Senate amendment.)

10. Modify definition of applicable high yield discount obligations

PRESENT LAW

A taxpayer generally may deduct the amount of interest paid or accrued within the taxable year on indebtedness issued by the taxpayer. Original issue discount (OID) is the excess of the stated redemption price at maturity over the issue price of a debt instrument. The issuer of a debt instrument with OID generally accrues and deducts, as interest, the discount over the life of the obligation, even though the amount of the interest may not be paid until the maturity of the instrument.

Special rules apply to applicable high yield discount obligations. A certain portion of the yield on an applicable high yield discount obligation is treated as a dividend and is not deductible and another portion is not deductible until paid. An applicable high yield discount obligation is one that: (1) has a maturity date more than 5 years from the date of issue; (2) has a yield to maturity at least equal to the applicable Federal rate plus 5 percentage points; and (3) has significant OID. An instrument has significant OID if, for any accrual period ending after the date 5 years after the date of issue, the aggregate amount of interest taken into account as income under the instrument exceeds the sum of the aggregate amount of interest paid plus the product of the issue price of the instrument and its yield to maturity.

HOUSE BILL

No provision in H.R. 11. However, H.R. 5650 as passed by the House, contains a provision identical to the provision of the Senate amendment.

SENATE AMENDMENT

The Senate amendment provides that an applicable high yield discount obligation is one that: (1) has a maturity date more than 4 years (rather than 5 years) from the date of issuance; (2) has a yield to maturity at least equal to the applicable Federal rate plus 5 percentage points; and (3) has significant OID. An instrument has significant OID if, for any accrual period ending after the date 4 years (rather than 5 years) after the date of issue, the aggregate amount of interest taken into account as income under the instrument exceeds the sum of the aggregate amount of interest paid plus the product of the issue price of the instrument and its yield to maturity.

Effective date.—The provision is effective for obligations issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the provision in H.R. 5650 and the Senate amendment.

11. Deny Deduction for Club Dues

PRESENT LAW

No deduction is permitted for club dues unless the taxpayer establishes that his or her use of the club was primarily for the furtherance of the taxpayer's trade or business and the specific expense was directly related to the active conduct of that trade or business. No deduction is permitted for an initiation or similar fee that is payable only upon joining a club if the useful life of the fee extends over more than one year. Such initiation fees are nondeductible capital expenditures.[1]

HOUSE BILL

Under the bill, no deduction is permitted for club dues. This rule applies to all types of clubs: business, social, athletic, luncheon, or sporting clubs. Specific business expenses (e.g., meals) incurred at a club would be deductible only to the extent they otherwise satisfy present-law standards for deductibility.

Effective date.—The provision is effective for club dues paid after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that the provision is effective for club dues paid after December 31, 1992.

---

[1] *Kenneth D. Smith*, 24 TCM 899 (1965).

12. Increase casualty loss deductible from $100 to $500

PRESENT LAW

Individuals may deduct losses of property not connected with a trade or business or a transaction entered into for profit if the loss arises from theft or from fire, storm, shipwreck, or other casualty. Only the amount of the loss in excess of $100 per casualty loss can be deducted. In addition, the casualty losses of a taxpayer for a taxable year may be deducted only to the extent that the sum of such losses (determined after application of the $100 threshold to each loss) exceeds 10 percent of the taxpayer's adjusted gross income (AGI).

HOUSE BILL

No provision in H.R. 11. (However, H.R. 2735 as passed by the House contains the same provision as included in the conference agreement below.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement increases to $500 the threshold for deducting casualty losses. The $500 threshold is indexed for inflation (with rounding to the nearest $10) for taxable years beginning after 1993. As under present law, the amount of casualty losses above the threshold are allowed as a deduction only to the extent that their sum exceeds 10 percent of the individual's AGI.

Effective date.—The provision is effective for taxable years beginning after December 31, 1992.

13. Substantiation of business meal and entertainment expenses

PRESENT LAW

No deduction is allowed with respect to business meal and entertainment expenses (as well as other specified items) unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (1) the amount of the expense, (2) the time and place of the expense, (3) the business purpose of the expense, and (4) the business relationship to the taxpayer of the persons entertained.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that a taxpayer shall not be treated as meeting the substantiation requirements imposed on

business meal and entertainment expenses unless the amount of the expense is shown on a receipt which is prepared by the provider of such services and which is provided at the time of the expense (or within a reasonable period thereafter). For example, under the conference agreement a taxpayer would not be treated as meeting these substantiation requirements if the taxpayer obtained a blank receipt from a restaurant and the taxpayer filled in the amount of the expense.

The conference agreement does not alter the present-law rules that permit the Secretary to issue regulations providing that some or all of the substantiation requirements shall not apply in the case of an expense which does not exceed an amount prescribed pursuant to those regulations; the conference agreement provides that a taxpayer shall not be treated as meeting the substantiation requirements under certain circumstances, while the regulations provide that the substantiation requirements shall not apply in certain circumstances.

Effective date.—The provision is effective on the date of enactment.

14. Treatment of passive activity losses and credits in certain discharges of indebtedness

PRESENT LAW

The discharge of indebtedness generally gives rise to gross income to the debtor taxpayer. Present law provides exceptions to this general rule. Among the exceptions are rules providing that income from the discharge of indebtedness of the taxpayer is excluded from income if the discharge occurs in a title 11 case, the discharge occurs when the taxpayer is insolvent, or in the case of certain farm indebtedness (Code sec. 108(a)(1)). The amount excluded from income under these exceptions is applied to reduce tax attributes of the taxpayer. The tax attributes reduced (in order) are net operating losses and carryovers, carryovers to or from the year of discharge in determining the general business credit, net capital losses for the year of discharge and capital loss carryovers to the year of discharge, and the basis of certain property of the taxpayer. The amount of the reduction is generally a dollar for each dollar excluded, except that for credit carryovers, the reduction is 33⅓ cents for each dollar excluded.

Under present law, the passive loss rules limit deductions and credits from passive trade or business activities. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income, such as wages, portfolio income, or business income that is not derived from a passive activity. A similar rule applies with respect to credits from passive activities. Deductions and credits suspended under these rules are carried forward to the next taxable year, and are allowed in full when the taxpayer disposes of his entire interest in the passive activity to an unrelated person. Passive losses and credits are not tax attributes reduced under the rule relating to exclusion of discharge of indebtedness income.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment adds passive activity loss and credit carryovers from the taxable year of the discharge to the list of tax attributes that are reduced in the case of a discharge of indebtedness of the taxpayer that is excludable from income under Code section 108(a)(1). The amount of the reduction is generally one dollar for each dollar excluded, except that the reduction in the case of passive activity credits is 33⅓ cents for each dollar excluded.

Effective date.—The provision applies with respect to taxable years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

15. Repeal the stock-for-debt exception to cancellation of indebtedness income

PRESENT LAW

Gross income generally includes cancellation of indebtedness (COD) income. Taxpayers in title 11 cases and insolvent taxpayers, however, generally exclude COD income from gross income but reduce tax attributes by the amount of COD income. The amount of COD income that an insolvent taxpayer excludes cannot exceed the amount by which the taxpayer is insolvent.

The amount of COD income generally is the difference between the adjusted issue price of the debt being cancelled and the amount of cash and the value of any property used to satisfy the debt. Thus, for purposes of determining the amount of COD income of a debtor corporation that transfers stock to a creditor in satisfaction of its indebtedness, the corporation generally is treated as realizing COD income equal to the excess of the adjusted issue price of the debt over the fair market value of the stock. However, if the debtor corporation is in a title 11 case or is insolvent, the excess of the debt discharged over the fair market value of the transferred stock generally does not constitute COD income (the stock-for-debt exception).[1] Thus, a corporate debtor that qualifies for the stock-for-debt exception is not required to reduce its tax attributes as a result of the debt discharge. The stock-for-debt exception does not apply to the issuance of certain preferred stock, nominal or token shares of stock, or stock to unsecured creditors on a relatively disproportionate basis. In the case of an insolvent debtor not in a title 11 case, the exception applies only to the extent the debtor is insolvent.

---

[1] In addition, if the debtor corporation issues both stock and other consideration to a creditor in satisfaction of indebtedness, the non-stock consideration is generally treated as satisfying an amount of debt equal to the value of such consideration, with the stock being considered as satisfying the remainder. Thus, if such transaction qualifies for the stock-for-debt exception, the entire amount of COD income realized by the debtor corporation in the transaction generally is excluded from gross income.

HOUSE BILL

No provision in H.R. 11. However, section 203 of H.R. 5674 as passed by the House repeals the stock-for-debt exception. Thus, regardless of whether a debtor corporation is insolvent or in bankruptcy, the transfer of its stock in satisfaction of its indebtedness will be treated as if the corporation satisfied the indebtedness with an amount of money equal to the fair market value of the stock that had been transferred.

Effective date.—Stock transferred after July 9, 1992, other than a transfer in a title 11 or similar case filed on or before July 9, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows H.R. 5674, except that the effective date is modified to provide as follows: The provision applies to stock transferred in satisfaction of any indebtedness after July 9, 1992, unless (1) the transfer is in a title 11 or similar case filed on or before July 9, 1992, (2) the transfer occurs on or before December 31, 1993, and the transfer is pursuant to a binding contract in effect on July 9, 1992, or (3) the transfer occurs on or before December 31, 1993, and the taxpayer had filed with the SEC on or before July 9, 1992, a registration statement which proposed a stock for debt exchange with respect to such indebtedness, and which discussed the possible application of the stock-for-debt exception to such exchange.

16. Increase base tax rate on ozone-depleting chemicals

PRESENT LAW

An excise tax is imposed on certain ozone-depleting chemicals. The amount of tax generally is determined by multiplying the base tax rate applicable for the calendar year by an ozone-depleting factor assigned to the chemical. Certain chemicals are subject to a reduced rate of tax for years prior to 1994.

Between 1992 and 1995 there are two base tax rates applicable, depending upon whether the chemicals were initially listed in the Omnibus Budget Reconciliation Act of 1989 or whether they were newly listed in the Omnibus Budget Reconciliation Act of 1990. The base tax rate applicable to initially listed chemicals is $1.67 per pound for 1992, $2.65 per pound for 1993 and 1994, and an additional 45 cents per pound per year for each year thereafter. The base tax rate applicable to newly listed chemicals is $1.37 per pound for 1992, $1.67 per pound for 1993, $3.00 per pound for 1994, $3.10 per pound for 1995, and an additional 45 cents per pound per year for each year thereafter.

HOUSE BILL

No provision.

SENATE AMENDMENT

Base tax amount.—The Senate amendment increases the base tax amount of both initially listed chemicals and newly listed chemicals by $0.15 per pound for 1992, by $0.25 per pound for 1993, by $0.35 per pound for 1994, and by $0.45 per pound for 1995. For each year after 1995, the increase in the base tax amount is $0.45 per pound.

Rigid foam insulation and halons.—The Senate amendment reduces the applicable percentage used in the computation of the tax applied to chemicals used in rigid foam insulation and for certain halons in 1992 and 1993. For chemicals used in rigid foam insulation, the provision reduces the applicable percentage from 15 percent to 13.76 percent for 1992, and reduces the applicable percentage from 10 percent to 8.33 percent for 1993. For Halon-1211 the new applicable percentages are 4.58 percent for 1992 and 2.78 percent for 1993. For Halon-1301 the new applicable percentages are 1.38 percent for 1992 and 0.83 percent for 1993. For Halon-2402 the new applicable percentages are 2.29 percent for 1992 and 1.39 percent for 1993. The effect of this provision is to continue present-law rates on these chemicals for 1992 and 1993.

Medical sterilants.—The Senate amendment provides for a reduced rate of tax for certain ozone-depleting chemicals used as medical sterilants for 1992 and 1993. The applicable percentage for such chemicals for 1992 is 91.76 percent and is 55.67 percent for 1993.

Effective date.—The provision is effective for taxable chemicals sold or used on or after October 1, 1992. Floor stocks taxes are imposed on taxed chemicals held on the effective dates of changes in the base tax rate.

CONFERENCE AGREEMENT

The conference agreement does not contain the provision. (However, the conference agreement on H.R. 776 includes increases in the tax on ozone-depleting chemicals.)

17. Modify depreciation of water utility property

PRESENT LAW

In general, property that is used in the gathering, treatment, and commercial distribution of water is assigned a class-life of 50 years. Consequently, the depreciation deductions for such property for regular tax purposes generally are determined by using a 20-year recovery period and the 150-percent declining balance method switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

HOUSE BILL

No provision.

Senate Amendment

The Senate amendment requires the depreciation deductions allowed for regular tax purposes with respect to water utility property to be determined by using a recovery period of 25 years and the straight-line method. For this purpose, water utility property is defined as property that is an integral part of the gathering, treatment, and commercial distribution of water and that (without regard to the provision) would be 20-year property.

Effective date.—The provision generally applies to property placed in service after December 31, 1992. The provision, however, does not apply to property that is acquired or constructed pursuant to a binding contract in effect on December 31, 1992, and at all times thereafter until the property is placed in service.

Conference Agreement

The conference agreement does not contain the provision of the Senate amendment.

B. Extension of Existing Provisions

1. Five-year extension of top estate and gift tax rates

Present Law

The Federal estate and gift taxes are unified so that a single progressive rate schedule is applied to an individual's cumulative gifts and bequests. The generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate.

For 1992, the Federal estate and gift tax rates begin at 18 percent on the first $10,000 of taxable transfers and reach 55 percent on taxable transfers in excess of $3 million. For transfers occurring after 1992, the maximum Federal estate and gift tax rates are scheduled to decline to 50 percent on taxable transfers over $2.5 million.

In addition, the benefit of the graduated rates and the unified credit is phased-out at a 5-percent rate for taxable transfers that exceed $10,000,000 and do not exceed $21,040,000 ($18,340,000 in the case of decedents dying, and gifts made, after 1992).

House Bill

The House bill would defer for five years the estate and gift tax rate reductions that were scheduled to take effect after 1992 until after 1997. Also, the rate of tax on generation skipping transfers would remain at 55 percent until after 1997.

Effective date.—The provision is effective for decedents dying, gifts made, and generation skipping transfers occurring after December 31, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Extension of personal exemption phaseout

PRESENT LAW

Present law permits a personal exemption deduction from gross income for an individual, the individual's spouse, and each dependent. For 1992, the amount of this deduction is $2,300 for each exemption claimed. This exemption amount is adjusted for inflation. The deduction for personal exemptions is phased out for taxpayers with adjusted gross income (AGI) above a threshold amount (indexed for inflation) which is based on filing status. For 1992, the threshold amounts are $157,900 for married taxpayers filing joint returns, $78,950 for married taxpayers filing separate returns, $131,550 for unmarried taxpayers filing as head of household, and $105,250 for unmarried taxpayers filing as single.

The total amount of exemptions which may be claimed by a taxpayer is reduced by 2 percent for each $2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold (the phaseout rate is 4 percent for married taxpayers filing separate returns). Thus, the personal exemptions claimed are phased out over a $122,500 range, beginning at the applicable threshold.

This provision does not apply to taxable years beginning after December 31, 1996.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment extends permanently the present-law personal exemption phaseout applicable to higher-income individuals.

Effective date.—The provision is effective for taxable years beginning in 1997 and thereafter.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

3. Extension of itemized deduction limitation

PRESENT LAW

Under present law, individuals who do not elect the standard deduction may claim itemized deductions (subject to certain limitations) for certain nonbusiness expenses incurred during the taxable year. Among these deductible expenses are unreimbursed medical expenses, casualty and theft losses, charitable contributions, qualified residence interest, State and local income and property taxes, unreimbursed employee business expenses, and certain other miscellaneous expenses.

Certain itemized deductions are allowed only to the extent that the amount exceeds a specified percentage of the taxpayer's adjusted gross income (AGI). Unreimbursed medical expenses for care of the taxpayer and the taxpayer's spouse and dependents are deductible only to the extent that the total of these expenses exceeds 7.5 percent of the taxpayer's AGI. Nonbusiness casualty or theft losses are deductible only to the extent that the amount of loss arising from each casualty or theft exceeds $100 and only to the extent that the net amount of casualty and theft losses exceeds 10 percent of the taxpayer's AGI. Unreimbursed employee business expenses and certain other miscellaneous expenses are deductible only to the extent that the total of these expenses exceeds 2 percent of the taxpayer's AGI.

The total amount of otherwise allowable itemized deductions (other than medical expenses, casualty and theft losses, and investment interest) is reduced by 3 percent of the amount of the taxpayer's AGI in excess of a specified threshold. This threshold is $105,250 in 1992 (indexed for inflation). Under this provision, otherwise allowable itemized deductions may not be reduced by more than 80 percent. In computing the reduction of total itemized deductions, all present-law limitations applicable to such deductions are first applied and then the otherwise allowable total amount of deductions is reduced in accordance with this provision.

The reduction of otherwise allowable itemized deductions does not apply to taxable years beginning after December 31, 1995.

House Bill

No provision.

Senate Amendment

The Senate amendment extends permanently the present-law itemized deduction limitation applicable to higher-income individuals.

Effective date.—The provision is effective for taxable years beginning in 1996 and thereafter.

Conference Agreement

The conference agreement does not include the Senate amendment.

C. Estimated Tax Provisions

1. Modify individual estimated tax requirements

Present Law

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax liability of the prior year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax liability of the current year. Income tax withholding from wages is considered to be a payment of estimated taxes.

In addition, under a special rule, for taxable years beginning after 1991 and before 1997, a taxpayer that has an adjusted gross income (AGI) in the current year that exceeds the taxpayer's AGI in the prior year by more than $40,000 ($20,000 in the case of a separate return by a married individual) and (2) the taxpayer has an AGI in excess of $75,000 in the current year ($37,500 in the case of a separate return by a married individual) generally may not use the 100 percent of last year's liability safe harbor.

HOUSE BILL

The special rule that denies the use of the 100 percent of last year's liability safe harbor is repealed. In addition, the 100 percent of last year's liability safe harbor is modified to be a 115 percent of last year's liability safe harbor.

Thus, under the House bill, an individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 115 percent of the tax liability of the prior year or (2) 90 percent of the tax liability of the current year.

Effective date.—The provision is effective for estimated tax payments applicable to taxable years beginning after December 31, 1992. An individual may elect to use 115 percent of last year's liability safe harbor for the individual's taxable year beginning in 1992.

SENATE AMENDMENT

Same as the House bill, except that the Senate amendment provides a 120 percent of last year's liability safe harbor (rather than the 115 percent of last year's liability safe harbor provided in the House bill).

Effective date.—The provision is effective for estimated tax payments applicable to taxable years beginning after December 31, 1992. The Senate amendment does not contain the election to use the safe harbor for 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Modify estimated tax payment rules for large corporations

PRESENT LAW

A corporation is subject to an addition to tax for any underpayment of estimated tax. For taxable years beginning after June 30, 1992 and before 1997, a corporation does not have an underpayment of estimated tax if it makes four equal timely estimated tax payments that total at least 97 percent of the tax liability shown on the return for the current taxable year. A corporation may estimate its current year tax liability based upon a method that annualizes its income through the period ending with either the

month or the quarter ending prior to the estimated tax payment date.

For taxable years beginning after 1996, the 97-percent requirement becomes a 91-percent requirement. The present-law 97-percent and 91-percent requirements were added by the Unemployment Compensation Amendments of 1992.

A corporation that is not a "large corporation" generally may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of its tax liability for the preceding taxable year (the "100 percent of last year's liability safe harbor"). A large corporation may use this rule with respect to its estimated tax payment for the first quarter of its current taxable year. A large corporation is one that had taxable income of $1 million or more for any of the three preceding taxable years.

House Bill

For taxable years beginning after 1996, a corporation that does not use the 100 percent of last year's liability safe harbor for its estimated tax payments is required to base its estimated tax payments on 95 percent (rather than 91 percent) of its current year tax liability, whether such liability is determined on an actual or annualized basis.

The House bill does not change the present-law availability of the 100 percent of last year's liability safe harbor for large or small corporations.

In addition, the House bill modifies the rules relating to income annualization for corporate estimated tax purposes. Under the bill, annualized income is to be determined based on the corporation's activity for the first 3 months of the taxable year (in the case of the first and second estimated tax installments); the first 6 months of the taxable year (in the case of the third estimated tax installment); and the first 9 months of the taxable year (in the case of the fourth estimated tax installment). Alternatively, a corporation may elect to determine its annualized income based on the corporation's activity for either: (1) the first 3 months of the taxable year (in the case of the first estimated tax installment); the first 4 months of the taxable year (in the case of the second estimated tax installment); the first 7 months of the taxable year (in the case of the third estimated tax installment); and the first 10 months of the taxable year (in the case of the fourth estimated tax installment); or (2) the first 3 months of the taxable year (in the case of the first estimated tax installment); the first 5 months of the taxable year (in the case of the second estimated tax installment); the first 8 months of the taxable year (in the case of the third estimated tax installment); and the first 11 months of the taxable year (in the case of the fourth estimated tax installment). An election to use either of the annualized income patterns described in (1) or (2) above must be made on or before the due date of the second estimated tax installment for the taxable year for which the election is to apply, in a manner prescribed by the Secretary of the Treasury.

Effective date.—The provision is effective for estimated tax payments with respect to taxable years beginning after December 31, 1992.

SENATE AMENDMENT

For taxable years beginning after 1992, a corporation that does not use the 100 percent of last year's liability safe harbor for its estimated tax payments is required to base its estimated tax payments on 100 percent (rather than 97 percent or 91 percent) of its current year tax liability, whether such liability is determined on an actual or annualized basis.

The Senate amendment does not change the present-law availability of the 100 percent of last year's liability safe harbor for large or small corporations.

The Senate amendment also modifies the rules relating to income annualization for corporate estimated tax purposes in the same manner as the House bill.

Effective date—The provision is effective for estimated tax payments with respect to taxable years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

D. ADMINISTRATIVE PROVISIONS

1. Expansion of 45-day interest-free period for certain refunds

PRESENT LAW

No interest is paid by the Government on a refund arising from an income tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed (sec. 6611(e)).

There is no parallel rule for refunds of taxes other than income taxes (i.e., employment, excise, and estate and gift taxes), for refunds of any type of tax arising from amended returns, or for claims for refunds of any type of tax.

If a taxpayer files a timely original return with respect to any type of tax and later files an amended return claiming a refund, and if the IRS determines that the taxpayer is due a refund on the basis of the amended return, the IRS will pay the refund with interest computed from the due date of the original return.

HOUSE BILL

No provision.

SENATE AMENDMENT

No interest is to be paid by the Government on a refund arising from any type of original tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed.

A parallel rule applies to amended returns and claims for refunds: if the refund is issued by the 45th day after the date the amended return or claim for refund is filed, no interest is to be

paid by the Government for that period of up to 45 days (interest would continue to be paid for the period from the due date of the return to the date the amended return or claim for refund is filed). If the IRS does not issue the refund by the 45th day after the date the amended return or claim for refund is filed, interest would be paid (as under present law) for the period from the due date of the original return to the date the IRS pays the refund.

A parallel rule also applies to IRS-initiated adjustments (whether due to computational adjustments or audit adjustments). With respect to these adjustments, the IRS is to pay interest for 45 fewer days than it otherwise would.

Effective date.—The extension of the 45-day processing rule is effective for returns required to be filed (without regard to extensions) on or after October 1, 1992. The amended return rule is effective for amended returns and claims for refunds filed on or after October 1, 1992 (regardless of the taxable period to which they relate). The rule relating to IRS-initiated adjustments is applicable to refunds paid on or after October 1, 1992 (regardless of the taxable period to which they relate).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except as to the effective date.

Effective date.—The extension of the 45-day processing rule is effective for returns required to be filed (without regard to extensions) on or after January 1, 1993. The amended return rule is effective for amended returns and claims for refunds filed on or after January 1, 1994 (regardless of the taxable period to which they relate). The rule relating to IRS-initiated adjustments is applicable to refunds paid on or after January 1, 1994 (regardless of the taxable period to which they relate).

2. Reporting of amounts of property tax reimbursements paid to sellers of residences

PRESENT LAW

Individual taxpayers who itemize deductions may deduct State and local real property taxes. Under Code section 164(d)(1), if real property is sold during any real property tax year, the part of the real property tax that is properly allocable to that part of the year that ends on the day before the date of sale is treated as imposed on the seller. The part of the real property tax that is properly allocable to that part of the year that begins on the date of sale is treated as imposed on the buyer.

Under present law, real estate transactions are required to be reported on a return to the IRS and on statements to the customers. In general, the primary responsibility for reporting is on the "real estate reporting person," that is, the person responsible for closing the transactions, including any title company or attorney who closes the transaction. If there is no person responsible for closing the transaction, the real estate reporting person is the first person who exists in the following order: the mortgage lender, the

seller's broker, the buyer's broker, or such other person designated in regulations prescribed by the Secretary.

House Bill

No provision in H.R. 11. (However, H.R. 5638 as passed by the House contains a provision identical to that in the Senate amendment below.)

Senate Amendment

The Senate amendment provides that in the case of a real estate transaction involving a residence, the real estate reporting person is required to include on an information return and on the customer statements the portion of any real property tax that is treated as a tax imposed on the purchaser.

Effective date.—The provision is effective for transactions after December 31, 1992.

Conference Agreement

The conference agreement does not include the Senate amendment. (However, the conference agreement on H.R. 776 includes the Senate amendment.)

3. Require reporting of taxpayer identification numbers of parties in seller-financed mortgage transactions

Present Law

Taxpayers are generally allowed an itemized deduction from adjusted gross income for the amount of qualified residence interest paid. If qualified residence interest is paid to an individual, the name and address (but not the taxpayer identification number [1]) of the interest recipient must be reported on Schedule A of the payor's tax return.

Individuals receiving taxable interest in excess of $400 are required to report the amounts received and the names (but not the addresses or taxpayer identification numbers) of the payors on Schedule B of the payee's tax return.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that if any taxpayer claims a deduction for qualified residence interest on any seller-provided financing, such taxpayer (the buyer) shall include on his or her tax return the name, address, and taxpayer identification number of the person (the seller) to whom the interest is paid or accrued. In general, this information must be furnished on Schedule A of the buyer's tax return for every year in which the buyer deducts this interest.

---

[1] An individual's taxpayer identification number is generally that individual's Social Security number.

If any person receives or accrues interest from seller-provided financing, such person (the seller) shall include on his or her tax return the name, address, and taxpayer identification number of the person (the buyer) from whom the interest is received or accrued. In general, this information must be furnished on Schedule B of the seller's tax return for every year in which the seller is required to include this interest in income.

If any person involved in seller-provided financing is required to include on his or her tax return the taxpayer identification number of another person, such other person is required to furnish his or her taxpayer identification number to such person. Information would not be required to be reported under this provision to the extent it would be duplicative of existing information reporting requirements.

Failure to meet the requirements for information reporting described above are subject to information reporting penalties under section 6723. In general, these penalties are $50 for each failure.

Effective date.—The provision is effective for taxable years beginning after December 31, 1991.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment. (However, the conference agreement on H.R. 776 includes the Senate amendment.)

E. TAXABLE YEAR ELECTION FOR PARTNERSHIPS, S CORPORATIONS, AND PERSONAL SERVICE CORPORATIONS

PRESENT LAW

In general

A partnership is generally required for Federal income tax purposes to use the taxable year that is used by a majority of its partners. An S corporation is generally required for Federal income tax purposes to use the calendar year as its taxable year. A personal service corporation also is generally required for Federal income tax purposes to use the calendar year as its taxable year.[1]

A partnership, S corporation, or personal service corporation, however, may elect to use a taxable year other than the required taxable year. In the case of a partnership, S corporation, or personal service corporation that is adopting a taxable year or changing a taxable year, the taxable year that may be elected generally may not result in a deferral period of more than three months. For this purpose, the deferral period generally is the number of months between (1) the beginning of the taxable year of the partnership, S corporation, or personal service corporation, and (2) the close of the first required taxable year that ends within such year.

A partnership, S corporation, or personal service corporation is required to obtain the approval of the Internal Revenue Service in

---

[1] For this purpose, a personal service corporation is defined as a C corporation the principal activity of which is the performance of services if (1) the services are substantially performed by employee-owners, and (2) more than 10 percent of the stock of the corporation is owned by employee-owners.

order to change to a taxable year other than the required taxable year. A partnership, S corporation, or personal service corporation that terminates an election to use a taxable year other than the required taxable year may not make an election for any subsequent taxable year.

An election may not be made by a partnership, S corporation, or personal service corporation that is part of a tiered structure other than a tiered structure that is comprised of one or more partnerships or S corporations, all of which have the same taxable year. An electing partnership, S corporation, or personal service corporation that becomes part of a proscribed tiered structure is considered to have terminated its election.

Required payment for electing partnerships and S corporations

A partnership or S corporation that elects a taxable year other than the required taxable year is required to make a payment to the Internal Revenue Service (a "required payment") that is designed to compensate the Federal government for the deferral of tax that results from the use of a taxable year other than the required taxable year. The amount of the required payment for any taxable year for which an election is in effect (an "applicable election year") equals the excess (if any) of (1) the highest rate of tax in effect under section 1 of the Code plus 1 percentage point multiplied by the net base year income of the partnership or S corporation, over (2) the net required payment balance. The net required payment balance is the aggregate amount of required payments less refunds of required payments for all preceding taxable years for which an election was in effect.

The required payment is due on May 15 of the calendar year that follows the calendar year in which the applicable election year began. The required payment is required to be refunded by the Internal Revenue Service if certain conditions are satisfied. No interest is required to be paid by the Internal Revenue Service with respect to a refund of a required payment.

Minimum distribution requirement for electing personal service corporations

A personal service corporation that elects a taxable year other than the required taxable year is required to satisfy a minimum distribution requirement that applies to applicable amounts paid by the personal service corporation.[2] If the minimum distribution requirement is not satisfied for any taxable year for which a taxable year election is in effect, the deduction otherwise allowed for applicable amounts paid or incurred during such taxable year is limited to the applicable amounts paid during the deferral period of the taxable year multiplied by a ratio, the numerator of which is the number of months in the taxable year and the denominator of which is the number of months in the deferral period of the taxable year.

---

[2] The term "applicable amount" generally is defined as any amount paid to an employee-owner that is includible in the gross income of the employee-owner other than any dividend paid by the personal service corporation or any gain from the sale or exchange of property by the employee-owner to the personal service corporation.

The minimum distribution requirement is satisfied with respect to a taxable year only if the applicable amounts paid or incurred during the deferral period of the taxable year equal or exceed the lesser of (1) the applicable amounts paid during the preceding taxable year multiplied by a ratio, the numerator of which is the number of months in the deferral period of the taxable year and the denominator of which is the number of months in the taxable year, or (2) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

A net operating loss carryback is not allowed to or from a taxable year of a personal service corporation for which a taxable year election is in effect.

HOUSE BILL

In general

The House bill allows a partnership, S corporation, or personal service corporation to elect any taxable year without regard to the length of the deferral period of the taxable year elected. If a partnership, S corporation, or personal service corporation, however, has annual reports or statements that (1) ascertain the income, profit, or loss of the entity, and (2) are used for credit purposes or are provided to the partners, shareholders, or other proprietors of the entity, then the entity may only elect a taxable year that covers the same period as such annual reports or statements.

The House bill also repeals the provision of present law that prohibits a partnership, S corporation, or personal service corporation from electing a taxable year other than the required taxable year if an earlier taxable year election has been terminated. The House bill requires a partnership, S corporation, or personal service corporation to obtain the approval of the Internal Revenue Service in order to change a taxable year (including, unlike present law, a change to the required taxable year).

It is anticipated that the Internal Revenue Service will provide a procedure by which a partnership, S corporation, or personal service corporation may expeditiously obtain the approval of the Internal Revenue Service in order to change a taxable year (for example, by timely filing a form with the Internal Revenue Service). It is anticipated that this "automatic consent" procedure will only apply to a partnership, S corporation, or personal service corporation that has not changed its taxable year within the past 6 calendar years, except that the 6-year limitation will not apply to any partnership, S corporation, or personal service corporation that has changed its taxable year in order to comply with the taxable year requirements contained in the Tax Reform Act of 1986.

It is also anticipated that the "automatic consent" procedure will require any net operating loss of a personal service corporation that arises in a short period required to effect a change in taxable year to be deducted ratably over a 6-year period beginning with the first taxable year after the short period. In addition, it is anticipated that the "automatic consent" procedure will require any excess of deductions over income of a partnership or S corporation that arises in a short period required to effect a change in taxable year to be taken into account by the partners or shareholders over a 6-

year period beginning with the taxable year of the partners or shareholders that includes the last day of the first taxable year of the partnership or S corporation that occurs after the short period.

The House bill also provides that a taxable year election is to remain in effect until the partnership, S corporation, or personal service corporation terminates its election and changes to the required taxable year.[3] A change from a taxable year that is not a required taxable year to another taxable year that is not a required taxable year is not treated as a termination of the taxable year election unless the taxable year is allowable by reason of a business purpose.

The House bill provides that a partnership, S corporation, or personal service corporation is not to be considered part of a tiered structure solely because a trust the beneficiaries of which use the calendar year owns an interest in the partnership, S corporation, or personal service corporation. Consequently, an election of a taxable year other than the required taxable year may be made by a partnership, S corporation, or personal service corporation with respect to which a trust owns an interest if all of the beneficiaries of the trust use the calendar year and the partnership, S corporation, or personal service corporation is not otherwise considered to be part of a proscribed tiered structure.

Required payment for electing partnerships and S corporations

The House bill increases the amount of the required payment that must be made by a partnership or S corporation that elects a taxable year other than the required taxable year (including any partnership or S corporation that has an election in effect on the date of enactment of the bill). Under the House bill, the amount of the required payment for any applicable election year equals the excess (if any) of (1) the highest rate of tax in effect under section 1 of the Code as of the close of the first required taxable year ending within the applicable election year plus 2 percentage points, multiplied by the net base year income of the partnership or S corporation, over (2) the net required payment balance.

In addition, the House bill requires an additional required payment for any new applicable election year of a partnership or S corporation. For this purpose, a new applicable election year is defined as any applicable election year that either (1) immediately follows a taxable year for which a taxable year election was not in effect, or (2) covers a different period than the preceding taxable year by reason of a change in the taxable year elected. If, however, the applicable election year described in the preceding sentence is a short taxable year that does not include the last day of a required taxable year, then the new applicable election year is the taxable year immediately following the short taxable year.

In the case of a new applicable election year that does not result from a change in the taxable year elected, the amount of the

---

[3] As under present law, a taxable year election is also terminated if: (1) the entity becomes part of a proscribed tiered structure; or (2) a partnership or S corporation willfully fails to comply with the required payment rules described below. In addition, the House bill authorizes the Treasury Department to issue regulations which provide for the termination of a taxable year election if the entity does not comply with the annual financial statement requirement described above.

additional required payment equals 75 percent of the amount of the required payment for such applicable election year (determined without regard to the additional required payment). In the case of a new applicable election year that results from a change in the taxable year elected, the amount of the additional required payment equals 75 percent of the excess (if any) of (1) the amount of the required payment for such applicable election year (determined without regard to the additional required payment), over (2) the amount of the required payment for such applicable election year (determined without regard to the additional required payment) determined by using the deferral ratio and the deferral period that applied to the taxable year that was used prior to the change.[4]

The additional required payment is required to be made on or before September 15 of the calendar year in which the new applicable election year begins. A partnership or S corporation that fails to make the additional required payment by the due date of such payment is treated as having terminated the taxable year election and changed to the required taxable year.

In determining the net base year income of a partnership or S corporation for purposes of the required payment (including the additional required payment), the base year is defined as the first taxable year of 12 months (or 52–53 weeks) of the partnership or S corporation that precedes the applicable election year.[5] In addition, in the case of a new applicable election year, the net income for the base year is to be increased by the excess (if any) of (1) the applicable payments taken into account in determining net income for the base year, over (2) 120 percent of the average amount of applicable payments made during the 3 taxable years immediately preceding the base year.[6]

The House bill also requires interest to be paid by the Internal Revenue Service with respect to a refund of a required payment but only for the period that begins on the date that the refund is payable and that ends on the date of the payment of the refund.

Minimum distribution requirement for electing personal service corporations

The House bill modifies the minimum distribution requirement that must be satisfied by a personal service corporation that elects a taxable year other than the required taxable year (including a personal service corporation that has an election in effect on the date of enactment of the bill). The minimum distribution requirement is satisfied with respect to a taxable year only if the applicable amounts paid during the deferral period of the taxable year equal or exceed the lesser of (1) 110 percent of the applicable amounts paid during the first preceding taxable year of 12 months

---

[4] In the case of a new applicable election year that results from a change in the taxable year elected, an additional required payment is required only if the deferral period of the new applicable election year exceeds the deferral period of the former applicable election year.

[5] The Treasury Department is authorized to promulgate regulations that provide for the application of the required payment rules if there is no taxable year of 12 months (or 52–53 weeks) of the partnership or S corporation that precedes the applicable election year. It is anticipated that these regulations will annualize the results of any short taxable year that is used as the base year.

[6] In the event that there are not 3 taxable years immediately preceding the base year, the provision is to apply based on the number of taxable years immediately preceding the base year.

(or 52–53 weeks)[7] multiplied by a ratio, the numerator of which is the number of months in the deferral period of the taxable year and the denominator of which is 12, or (2) 110 percent of the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

The House bill also permits a personal service corporation to carry back a net operating loss from a taxable year for which a taxable year election was not in effect to a taxable year for which a taxable year election was in effect.

Effective date

The provision of the House bill relating to the taxable year election applies to taxable years beginning after December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

F. WITHHOLDING PROVISIONS

1. Withholding on supplemental wage payments

PRESENT LAW

Under Treasury regulations (Treas. Reg. sec. 31.3402(g)-1), withholding on supplemental wage payments (such as bonuses, commissions, and overtime pay) that are not paid concurrently with wages (or that are paid concurrently with wages, but are separately stated) for a payroll period may be done at a rate of 20 percent (at the employer's election).

HOUSE BILL

No provision.

SENATE AMENDMENT

The elective withholding rate on supplemental wage payments is increased from 20 percent to 28 percent.

Effective date.—The provision is effective for payments of supplemental wages made after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

---

[7] The Treasury Department is authorized to promulgate regulations that provide for the application of the minimum distribution requirement if there is no preceding taxable year of 12 months (or 52–53 weeks) of the personal service corporation. It is anticipated that these regulations will annualize the results of any short year that is taken into account for purposes of these rules.

2. Withholding on certain gambling winnings

PRESENT LAW

In general, proceeds from a wagering transaction are subject to withholding at a rate of 20 percent if such proceeds exceed $1,000 and if the amount of such proceeds is at least 300 times as large as the amount wagered. The proceeds from a wagering transaction are determined by subtracting from the amount received the amount wagered. Any non-monetary proceeds that are received are taken into account at fair market value.

In the case of State-conducted lotteries, proceeds from a wager are subject to withholding at a rate of 20 percent if such proceeds exceed $5,000, regardless of the odds of the wager. This rule applies only if the wager is placed with the State agency conducting the lottery or with its authorized agents or employees.

In the case of sweepstakes, wagering pools, or lotteries other than State-conducted lotteries, proceeds from a wager are subject to withholding at a rate of 20 percent if such proceeds exceed $1,000, regardless of the odds of the wager.

No withholding tax is imposed on winnings from a slot machine, bingo, or keno.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 5660 as passed by the House contains the same provision as included in the Senate amendment.)

SENATE AMENDMENT

The Senate amendment increases the rate of withholding on gambling winnings from 20 percent to 28 percent.

Effective date.—The provision is effective for payments made after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment. (However, the conference agreement on H.R. 776 includes the Senate amendment.)

3. Increase backup withholding rate

PRESENT LAW

Under section 3406, a payor is required to withhold on "reportable payments", such as interest and dividends, at a rate of 20 percent if: (i) the payee fails to furnish his TIN to the payor; (ii) the IRS notifies the payor that the payee's TIN is incorrect; (iii) a notified payee underreporting has occurred (as described in section 3406(c)); or (iv) a payee certification failure with respect to reportable payments has occurred (as described in section 3406(d)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The amendment increases the rate of withholding with respect to backup withholding from 20 percent to 31 percent.

Effective date.—The amendment is effective for amounts paid after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment. (However, the conference agreement on H.R. 776 includes the Senate amendment.)

IV. SIMPLIFICATION PROVISIONS

A. PROVISIONS RELATING TO INDIVIDUALS

1. Rollover of gain on sale of a principal residence

PRESENT LAW

No gain is recognized on the sale of a principal residence if a new residence at least equal in cost to the sales price of the old residence is purchased and used by the taxpayer as his or her principal residence within a specified period of time (sec. 1034). This replacement period generally begins two years before and ends two years after the date of sale of the old residence. The basis of the replacement residence is reduced by the amount of any gain not recognized on the sale of the old residence by reason of section 1034.

In general, nonrecognition treatment is available only once during any two-year period. In addition, if the taxpayer purchases more than one residence during the replacement period and such residences are each used as the taxpayer's principal residence within two years after the date of sale of the old residence, only the last residence so used is treated as the replacement residence.

Special rules apply, however, if residences are sold in order to relocate for employment reasons. First, the number of times nonrecognition treatment is available during a two-year period is not limited. Second, if a residence is sold within two years after the sale of the old residence, the residence sold is treated as the last residence used by the taxpayer and thus as the only replacement residence.

The determination whether property is used by a taxpayer as a principal residence depends upon all the facts and circumstances in each case, including the good faith of the taxpayer. No safe harbor is provided for sales of principal residences incident to divorce or marital separation.

HOUSE BILL

Multiple rollovers

Under the House bill, gain is rolled over from one residence to another residence in the order the residences are purchased and used, regardless of the taxpayer's reasons for the sale of the old residence. In addition, gain may be rolled over more than once

within a two-year period. Thus, the rules that formerly applied only if a taxpayer sold his residence in order to relocate for employment purposes will apply in all cases. As under present law, the basis of each succeeding residence is reduced by the amount of gain not recognized on the sale of the prior residence.

Effective date.—The provision applies to sales of old residences (within the meaning of section 1034) after the date of enactment.

Rollovers in the case of divorce or separation

The House bill provides a safe harbor in the determination of principal residence in certain cases incident to divorce or marital separation. Specifically, the bill provides that a residence is treated as the taxpayer's principal residence at the time of sale if (1) the residence is sold pursuant to a divorce or marital separation and (2) the taxpayer used such residence as his or her principal residence at any time during the two-year period ending on the date of sale.

Effective date.—The provision applies to sales of old residences (within the meaning of section 1034) after the date of enactment.

Rollovers in the case of frozen assets

No provision. (However, H.R. 5639 as passed by the House contains a provision similar to the Senate amendment.)

SENATE AMENDMENT

Multiple rollovers

No provision.

Rollovers in the case of divorce or separation

The Senate amendment is the same as the House bill.

Rollovers in the case of frozen assets

The Senate amendment suspends the running of the two-year period after the date of sale of the old residence (referred to in sec. 1034 (a) and (c) other than (c)(4)) during any time that the taxpayer has frozen deposits during the two-year period beginning on the date of sale of the old residence. The period as suspended may not extend beyond the date that is four years after the date of sale of the old residence. A taxpayer is treated as having frozen deposits if the taxpayer's deposit in a financial institution may not be withdrawn due to: (1) the bankruptcy or insolvency of the financial institution or, (2) any requirement imposed by the State in which the financial institution is located by reason of the bankruptcy or insolvency (or threat thereof) of one or more financial institutions located in the State.

For purposes of this provision, the taxpayer and the taxpayer's spouse are treated as one taxpayer if the old residence and the new residence are each used by the taxpayer and the taxpayer's spouse as their principal residence.

Effective date.—The provision relating to frozen assets applies to any residence sold or exchanged after December 31, 1990, and any residence sold or exchanged before that date if the two-year rollover period had not expired before January 1, 1991.

CONFERENCE AGREEMENT

Multiple rollovers

The conference agreement follows the House bill.

Rollovers in the case of divorce and separation

The conference agreement follows the House bill and the Senate amendment.

Rollovers in the case of frozen assets

The conference agreement generally follows the Senate amendment, with the following modifications. The suspension of the running of the two-year period is triggered if the taxpayer has substantial frozen deposits during the two-year period beginning on the date of sale of the old residence. A taxpayer is treated as having substantial frozen deposits if the taxpayer's deposit in a financial institution may not be withdrawn for a period of at least five days due to: (1) the bankruptcy or insolvency of the financial institution or, (2) any requirement imposed by the State in which the financial institution is located by reason of the bankruptcy or insolvency (or threat thereof) of one or more financial institutions located in the State.

The aggregate amount of frozen deposits must exceed 50 percent of the adjusted sales price (under Code sec. 1034(b)) of the old residence less the amount of any indebtedness of the taxpayer which was secured by the old residence.

2. De minimis exception to passive loss rules

PRESENT LAW

The passive loss rules limit deductions and credits from passive trade or business activities. Deductions from passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income, such as wages, portfolio income, or business income that is not from a passive activity. Deductions that are suspended under this rule are carried forward and treated as deductions from passive activities in the next year. The suspended losses from a passive activity are allowed in full when a taxpayer disposes of the entire interest in the passive activity to an unrelated person.

Passive activities are defined to include trade or business activities in which the taxpayer does not materially participate. Material participation requires a taxpayer to be involved in the operations of the activity on a regular, continuous and substantial basis.

Rental activities are also included in the definition of passive activities. A special rule permits the deduction of up to $25,000 of losses from certain rental real estate activities in which the taxpayer actively participates (even though the activities are considered passive) for taxpayers with adjusted gross incomes of $100,000 or less. This deduction is phased out for taxpayers with adjusted gross incomes between $100,000 and $150,000. A rental activity is defined as any activity where payments are principally for the use of tangible property.

HOUSE BILL

The House bill creates a $200 de minimis exception to the rule disallowing net passive activity losses. Under the exception, a taxpayer who is an individual and whose total net passive activity losses for the year do not exceed $200 for the taxable year generally may deduct such losses for the year. The exception also applies to estates for the first two taxable years following the decedent's death. Similarly to the present-law rules applicable to the $25,000 exception, the amount under the exception provided in the bill is $100 in the case of a married taxpayer filing a separate return, and the exception is not available in the case of a married taxpayer filing a separate return who does not live apart from his spouse at all times during the taxable year.

The $200 exception is available only for taxpayers with net passive activity losses totalling $200 or less; a taxpayer with $300 of passive losses for the year, for example, is not eligible for the $200 exception. The $200 exception is applied after determining the taxpayer's net passive activity loss for the year (which includes taking into account suspended losses from prior years), but before taking the $25,000 allowance for rental real estate. Thus, for example, if a taxpayer has $500 of losses from rental real estate, he is not eligible for the $200 exception but may be eligible for the $25,000 exception (assuming he otherwise meets the requirements of the $25,000 exception). In all other respects, the $200 exception is applied after all other applicable rules under the passive loss rule.

The $200 exception does not apply with respect to passive activity credits.

The $200 exception does not apply with respect to items from publicly traded partnerships, to which the passive loss rule has separate application under present law.

Effective date.—The provision applies to taxable years beginning after December 31, 1991.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

3. Permit payment of taxes by credit card

PRESENT LAW

Payment of taxes may be made by checks or money orders, to the extent and under the conditions provided by regulations.

HOUSE BILL

The House bill permits payment of taxes by credit card, to the extent and under the conditions provided by regulations.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill, with a number of modifications.

In general

The Internal Revenue Service is engaged in a long-term modernization of its information systems, the Tax Systems Modernization (TSM) Program. This modernization is intended to address deficiencies in the current IRS information systems and to plan effectively for future information system needs and requirements. The systems changes are designed to reduce the burden on taxpayers, generate additional revenue through improved voluntary compliance, and achieve productivity gains throughout the IRS. One key element of this program is electronic filing of tax returns.

At the present time, increasing reliance is being placed upon electronic funds transfers for payment of obligations. In light of this, the Internal Revenue Service seeks to integrate these payment methods in its TSM program, including electronic filing of returns, as well as into its traditional collection functions. The conference agreement allows the IRS to accept electronic funds transfers, including those arising from credit cards and debit cards, for the payment of taxes. The IRS contemplates that it will proceed to negotiate contracts for these purposes with one or more private sector card systems.

Billing error resolution

In the course of processing these transactions, it will be necessary to resolve billing errors and other disputes. The Internal Revenue Code contains mechanisms for the determination of tax liability, defenses and other taxpayer protections, and the resolution of disputes with respect to those liabilities. The Truth-in-Lending Act contains provisions for determination of credit card liabilities, defenses and other consumer protections, and the resolution of disputes with respect to these liabilities.

The conference agreement excludes credit card issuers and processing mechanisms from the resolution of tax liability, but makes IRS subject to the Truth-in-Lending provisions insofar as those provisions impose obligations and responsibilities with regard to the "billing error" resolution process. It is not intended that consumers obtain additional ways to dispute their tax liabilities under the Truth-in-Lending provisions.

The conference agreement also specifically includes the use of debit cards in this provision and provides that the corresponding defenses and "billing error" provisions of the Electronic Fund Transfer Act will apply in a similar manner.

The conference agreement adds new section 6311(d)(3) to the Code. This section describes the circumstances under which section 161 of the Truth-in-Lending Act ("TILA") and section 908 of the Electronic Fund Transfer Act ("EFTA") apply to disputes that may arise in connection with payments of internal revenue taxes made

by credit card or debit card. Subsections (A) through (C) recognize that "billing errors" relating to the credit card account, such as an error arising from a credit card transaction posted to a cardholder's account without the cardholder's authorization, an amount posted to the wrong cardholder's account, or an incorrect amount posted to a cardholder's account as a result of a computational error or numerical transposition, are governed by the billing error provisions of section 161 of TILA. Similarly, subsections 6311(d)(3) (A)-(C) provide that errors such as those described above which arise in connection with payments of internal revenue taxes made by debit card, are governed by section 908 of EFTA.

The Internal Revenue Code provides that refunds are only authorized to be paid to the person who made the overpayment (generally the taxpayer). Subsection 6311(d)(3)(E), however, provides that where a taxpayer is entitled to receive funds as a result of the correction of a billing error made under section 161 of TILA in connection with a credit card transaction, or under section 908 of EFTA in connection with a debit card transaction, the Internal Revenue Service is authorized to utilize the appropriate credit card or debit card system to initiate a credit to the taxpayer's credit card or debit card account. The Internal Revenue Service may, therefore, provide such funds through the taxpayer's credit card or debit card account rather than directly to the taxpayer.

On the other hand, subsections 6311(d)(3) (A)-(C) provide that any alleged error or dispute asserted by a taxpayer concerning the merits of the taxpayer's underlying tax liability or tax return is governed solely by existing tax laws, and is not subject to section 161 or section 170 of TILA, section 908 of EFTA, or any similar provisions of State law. Absent the exclusion from section 170 of TILA, in a collection action brought against the cardholder by the card issuer the cardholder might otherwise assert as a defense that the Internal Revenue Service had incorrectly computed his tax liability. A collection action initiated by a credit card issuer against the taxpayer/cardholder would be an inappropriate vehicle for the determination of a taxpayer's tax liability, especially since the United States would not be a party to such an action.

Similarly, without the exclusion from section 161 of TILA and section 908 of EFTA, a taxpayer could contest the merits of his tax liability by putting the charge which appears on the credit card bill in dispute. Pursuant to TILA or EFTA, the taxpayer's card issuer would have to investigate the dispute, thereby finding itself in the middle of a dispute between the Internal Revenue Service and the taxpayer. The conferees believe that it is improper to attempt to resolve tax disputes through the billing process. The conferees note that the taxpayer retains the traditional, existing remedies for resolving tax disputes, such as resolving the dispute administratively with the Internal Revenue Service, filing a petition with the Tax Court after receiving a statutory notice of deficiency, or paying the disputed tax and filing a claim for refund (and subsequently filing a refund suit if the claim is denied or not acted upon).

Creditor status

The Truth-in-Lending Act imposes various responsibilities and obligations on creditors. Although the definition of the term "credi-

tor" set forth in 15 U.S.C. sec. 1602 is limited, and would generally not include the Internal Revenue Service, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card are, pursuant to 15 U.S.C. sec. 1602(f), creditors.

In addition, 12 CFR sec. 226.12(e) provides that the creditor must transmit a credit statement to the card issuer within 7 business days from accepting the return or forgiving the debt. The conferees are concerned that the response deadlines otherwise imposed by 12 CFR sec. 226.12(e), if applicable, would be difficult for the Internal Revenue Service to comply with (given the volume of payments the Service is likely to receive in peak periods). This could subject the Service to unwarranted damage actions.

Consequently, the conferees have generally provided an exception to creditor status for the Internal Revenue Service.

Privacy protections

The conference agreement also addresses privacy questions that arise from the IRS' participation in credit card processing systems. The conferees believe that taxpayers expect that the maximum possible protection of privacy will be accorded any transactions they have with the IRS. Accordingly, the conference agreement provides the greatest possible protection of taxpayers' privacy that is consistent with developing and operating an efficient tax administration system. The conferees expect that principle will be fully observed in the implementation of this provision.

A key privacy issue is the use and redisclosure of tax information by financial institutions for purposes unrelated to the processing of credit card charges, i.e., marketing and related uses. To accept credit card charges by taxpayers, the IRS will have to disclose tax information to financial institutions to obtain payment and to resolve billing disputes. To obtain payment, the IRS will have to disclose, at a minimum, information on the "credit slip," i.e., the dollar amount of the payment and the taxpayer's credit card number.

The resolution of billing disputes may require the disclosure of additional tax information to financial institutions. In most cases, providing a copy of the credit slip and verifying the transaction amount will be sufficient. Conceivably, financial institutions could require some information regarding the underlying liability even where the dispute concerns a "billing dispute" matter. This additional information would not necessarily be shared as widely as the initial payment data. In lieu of disclosing further information, the IRS may elect to allow disputed amounts to be charged back to the IRS and to reinstate the corresponding tax liability.

Credit card transaction information, including the identification of individual purchases, is routinely used by financial institutions for evaluating the creditworthiness of customers, determining the profitability of accounts, and targeting customers for offers of additional credit, banking services or other products. Additionally, some financial institutions may share such information with private credit bureaus who, in turn, may sell such information to direct mail marketers and others. The computerization of these records makes it very easy to extract subcategories of customers ac-

cording to whatever particular profile is desired (*e.g.*, customers within a single zip code who make a specified dollar amount of purchases at certain stores).

Despite the language in most cardholder agreements that permits redisclosure of credit card transaction information, the public may be largely unaware of how widely that information is shared. Without use and redisclosure restrictions, taxpayers may discover that some traditionally confidential tax information might be widely disseminated to direct mail marketers and others.

The conferees intend that credit or debit card transaction information will generally be restricted to those uses necessary to process payments and resolve billing errors, as well as other purposes that are specified in the statute. The conference agreement directs the Secretary to issue published procedures on what constitutes authorized uses and disclosures. The conferees anticipate that the Secretary's published procedures will prohibit the use of transaction information for marketing tax-related services by the issuer or any marketing that targets only those who use their credit card to pay their taxes. The conferees also anticipate that the published procedures will prohibit the sale of transaction information to a third party.

Effective date

The provision is effective nine months after the date of enactment. The IRS may, in this interim period, conduct internal tests and negotiate with card issuers, but may not accept credit or debit cards for payment of tax liability.

4. Election by parent to claim unearned income of certain children on parent's return

PRESENT LAW

The net unearned income of a child under 14 years of age is taxed to the child at the parents' statutory rate. Net unearned income means unearned income less the sum of $600 and the greater of: (1) $600 or, (2) if the child itemizes deductions, the amount of allowable deductions directly connected with the production of the unearned income. The dollar amounts are adjusted for inflation.

In certain circumstances, a parent may elect to include a child's unearned income on the parent's income tax return if the child's income is less than $5,000. A parent making this election must include the gross income of the child in excess of $1,000 in income for the taxable year. In addition, the parent must report an additional tax liability equal to the lesser of (1) $75 or (2) 15 percent of the excess of the child's income over $500. The dollar amounts for the election are not adjusted for inflation.

A person claimed as a dependent cannot claim a standard deduction exceeding the greater of $600 or such person's earned income. For alternative minimum tax purposes, the exemption of a child under 14 years of age generally cannot exceed the sum of such child's earned income plus $1,000. The $600 amount is adjusted for inflation but the $1,000 amount is not.

HOUSE BILL

The House bill adjusts for inflation the dollar amounts involved in the election to claim unearned income on the parent's return. It likewise indexes the $1,000 amount used in computing the child's alternative minimum tax.

Effective date.—The provision applies to taxable years beginning after December 31, 1991.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

5. Simplified foreign tax credit limitation for individuals

PRESENT LAW

In order to compute the foreign tax credit, a taxpayer computes foreign source taxable income and foreign taxes paid in each of the applicable separate foreign tax credit limitation categories. In the case of an individual, this requires the filing of IRS Form 1116, designed to elicit sufficient information to perform the necessary calculations.

In many cases, individual taxpayers who are eligible to credit foreign taxes may have only a modest amount of foreign source gross income, all of which is income from investments (e.g., dividends from a foreign corporation subject to foreign withholding taxes or dividends from a domestic mutual fund that can pass through its foreign taxes to the shareholder (see sec. 853)). Taxable income of this type ordinarily is subject to the single foreign tax credit limitation category known as passive income. However, under certain circumstances, the Code treats investment-type income (e.g., dividends and interest) as income in several other separate limitation categories (e.g., high withholding tax interest income, general limitation income) designed to accomplish certain policy objectives or forestall certain abuses. For this reason, any taxpayer with foreign source gross income is required to provide sufficient detail on Form 1116 to ensure that foreign source taxable income from investments, as well as all other foreign source taxable income, is allocated to the correct limitation category.

HOUSE BILL

The House bill allows individuals with no more than $200 of creditable foreign taxes, and no foreign source income other than income that is in the passive basket, to elect a simplified foreign tax credit limitation equal to the lesser of 25 percent of the individual's foreign source gross income or the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year. (It is intended that an individual electing this simplified limitation calculation not be required to file Form 1116 in order to obtain the benefit of the credit.) A person who elects the simplified

foreign tax credit limitation is not allowed a credit for any foreign tax not shown on a payee statement (as that term is defined in sec. 6724(d)(2)) furnished to him or her. Nor is the person entitled to treat any excess credits for a taxable year to which the election applied as a carryover to another taxable year. Because the limitation for a taxable year to which the election applies can be no more than the creditable foreign taxes actually paid for the taxable year, it is also the case under the House bill that no excess credits from another year can be carried over to the taxable year to which the election applies.

For purposes of the simplified limitation, passive income generally is defined to include all types of income that would be foreign personal holding company income under the subpart F rules, plus income inclusions from passive foreign corporations (as defined by the House bill), so long as the income is shown on a payee statement furnished to the individual. Thus, for purposes of the simplified limitation, passive income includes all dividends, interest (and income equivalent to interest), royalties, rents, and annuities; net gains from dispositions of property giving rise to such income; net gains from certain commodities transactions; and net gains from foreign currency transactions that give rise to foreign currency gains and losses as defined in section 988. The statutory exceptions to treating these types of income as passive for foreign tax credit limitation purposes, such as the exceptions for high-taxed income and high-withholding-tax interest, are not applicable in determining eligibility to use the simplified limitation.

Although an estate or trust generally computes taxable income and credits in the same manner as in the case of an individual (Code sec. 641(b); Treas. Reg. sec. 1.641(b)-1), the simplified limitation does not apply to an estate or trust.

Effective date.—The provision applies to taxable years beginning after December 31, 1991.

Senate Amendment

The Senate amendment is the same as the House bill, with one modification.

Under the Senate amendment, the simplified foreign tax credit limitation is available to married individuals filing joint tax returns with up to $400 of creditable foreign taxes, and no foreign source income other than income that is in the passive basket.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Personal transactions by individuals in foreign currency

Present Law

When a U.S. taxpayer with a U.S. dollar functional currency makes a payment in a foreign currency, gain or loss (referred to as "exchange gain or loss") arises from any change in the value of the foreign currency relative to the U.S. dollar between the time the currency was acquired (or the obligation to pay was incurred) and the time that the payment is made. Gain or loss results because

foreign currency, unlike the U.S. dollar, is treated as property for Federal income tax purposes.

Exchange gain or loss can arise in the course of a trade or business or in connection with an investment transaction. Exchange gain or loss can also arise where foreign currency was acquired for personal use. For example, the IRS has ruled that a taxpayer who converts U.S. dollars to a foreign currency for personal use—while traveling abroad—realizes exchange gain or loss on reconversion of appreciated or depreciated foreign currency (Rev. Rul. 74-7, 1974-1 C.B. 198).

Prior to the Tax Reform Act of 1986 (the "1986 Act"), most of the rules for determining the Federal income tax consequences of foreign currency transactions were embodied in a series of court cases and revenue rulings issued by the Internal Revenue Service ("IRS"). Additional rules of limited application were provided by Treasury regulations and, in a few instances, statutory bills. Pre-1986 law was believed to be unclear regarding the character, the timing of recognition, and the source of gain or loss due to fluctuations in the exchange rate of foreign currency. The result of prior law was uncertainty of tax treatment for many legitimate transactions, as well as opportunities for tax-motivated transactions. Therefore, in 1986 Congress determined that a comprehensive set of rules should be provided for the U.S. tax treatment of transactions involving "nonfunctional currencies;" that is, currencies other than the taxpayer's "functional currency."

However, the 1986 Act provisions designed to clarify the treatment of currency transactions, primarily found in section 988, apply to transactions entered into by an individual only to the extent that expenses attributable to such transactions would be deductible under section 162 (as a trade or business expense) or section 212 (as an expense of producing income, other than expenses incurred in connection with the determination, collection, or refund of taxes). Therefore, the principles of pre-1986 law continue to apply to personal currency transactions.[1]

House Bill

In a case where an individual acquires nonfunctional currency and then disposes of it in a personal transaction, and where exchange rates have changed in the intervening period, the House bill provides for nonrecognition of an individual's resulting exchange gain not exceeding $200. The House bill does not change the treatment of resulting exchange losses. It is understood that under other Code provisions, such losses typically are not deductible by individuals (e.g., sec. 165(c)).

Effective date.—The provision applies to taxable years beginning after December 31, 1991.

---

[1] See, e.g., Rev. Rul. 90-79, 1990-2 C.B. 187 (where the taxpayer purchased a house in a foreign country, financed by a foreign currency loan, and the currency appreciates before the house is sold and the loan is repaid, the taxpayer's exchange loss on repayment of the loan is not deductible under sec. 165 and does not offset taxable gain on the sale of the house).

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

7. Tax treatment of certain combat pay

PRESENT LAW

Exclusion for combat pay

Gross income does not include certain combat pay of members of the Armed Forces (Code sec. 112). If enlisted personnel serve in a combat zone during any part of any month, military pay for that month is excluded from gross income. In addition, if enlisted personnel are hospitalized as a result of injuries, wounds, or disease incurred in a combat zone, military pay for that month is also excluded from gross income; this exclusion is limited, however, to hospitalization during any month beginning not more than two years after the end of combat in the zone. In the case of commissioned officers, these exclusions from income are limited to $500 per month of military pay.

With respect to service in the combat zone designated for purposes of the Vietnam conflict, the exclusion from income for compensation while hospitalized does not apply to any month after January 1978.

Income tax withholding

There is no income tax withholding with respect to military pay for a month in which a member of the Armed Forces of the United States is entitled to the benefits of section 112 (sec. 3401(a)(2)). With respect to enlisted personnel, this income tax withholding rule parallels the exclusion from income under section 112: there is total exemption from income tax withholding and total exclusion from income. With respect to officers, however, the withholding rule is not parallel: there is total exemption from income tax withholding, although the exclusion from income is limited to $500 per month.

Combat zone designation for Persian Gulf

On January 21, 1991, President Bush signed Executive Order 12744, designating the Persian Gulf Area as a combat zone. The designation was retroactive to January 17, 1991, and continues in effect until termination by another Executive Order.

POWs/MIAs

Treasury regulations provide that a member of the Armed Forces in active service in a combat zone who becomes a prisoner of war or missing in action is deemed to continue in active service for the period for which the member is entitled to prisoner-of-war or missing-in-action status for military pay purposes (Treas. Reg. sec. 1.112–1(i)).

In the case of the Vietnam conflict only, members of the Armed Forces and civilian employees of the Federal Government may claim an exclusion from income for all their active service compensation for any month during any part of which they are in "missing status." In order to be classified in "missing status," a person must be in active service and officially determined to be (1) missing, (2) missing in action, (3) interned in a foreign country, (4) captured, beleaguered, or besieged by a hostile force or (5) detained in a foreign country against his or her will.

A person absent from his or her post of duty without authorization is not eligible for the "missing status" exclusion.

House Bill

Increase combat pay exclusion for commissioned officers

No provision.

Exclude military pay of Persian Gulf POWs/MIAs from gross income

No provision.

Clarify tax treatment for service in Vietnam

No provision.

Make income tax withholding rules parallel to rules for exclusion from income for combat pay

The House bill makes the income tax withholding exemption rules parallel to the rules providing an exclusion from income for combat pay.

Effective date.—The provision is effective as of January 1, 1993.

Senate Amendment

Increase combat pay exclusion for commissioned officers

The Senate amendment increases the exclusion from income in the case of commissioned officers to $2,000 per month of military pay. For taxable years beginning after December 31, 1994, the $2,000 amount will be indexed for inflation (with rounding to the nearest $50).

Effective date.—The provision is effective for service in a combat zone after December 31, 1993.

Exclude military pay of Persian Gulf POWs/MIAs from gross income

The Senate amendment extends the exclusion from income for those in "missing status" to members of the Armed Forces and civilian employees of the Federal Government in "missing status" as a result of the Persian Gulf conflict.

Effective date.—The provision applies to compensation for services performed on or after January 1, 1991.

Clarify tax treatment for service in Vietnam

For purposes of the exclusion from income for combat pay, the Senate amendment treats May 7, 1975, as the date of termination of combatant activities in the combat zone designated for purposes of the Vietnam conflict.

No change is made to the exclusion from income for active service compensation for members of the Armed Forces and civilian employees of the Federal Government for any month during any part of which they are in "missing status" as a result of the Vietnam conflict.

Effective date.—The provision is effective as of the date of enactment.

Make income tax withholding rules parallel to rules for exclusion from income for combat pay

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

Increase combat pay exclusion for commissioned officers

The conference agreement follows the Senate amendment.

Exclude military pay of Persian Gulf POWs/MIAs from gross income

The conference agreement follows the Senate amendment.

Clarify tax treatment for service in Vietnam

The conference agreement follows the Senate amendment.

Make income tax withholding rules parallel to rules for exclusion from income for combat pay

The conference agreement follows the House bill and the Senate amendment.

8. Expanded access to simplified income tax returns

PRESENT LAW

There are three principal tax forms that are utilized by individual taxpayers: Form 1040EZ, Form 1040A, and Form 1040.

HOUSE BILL

The House bill provides that the Secretary of the Treasury (or his delegate) shall take such actions as may be appropriate to expand access to simplified individual income tax forms and otherwise to simplify the individual income tax returns.

The bill also requires that the Secretary submit a report to the Congress on the actions undertaken pursuant to this bill, together with any recommendations he may deem advisable.

Effective date.—The report is due no later than one year after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill. In addition, the Senate amendment specifies that the Secretary study expanding access to Form 1040A.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

9. Simplification of tax treatment of rural letter carriers' vehicle expenses

PRESENT LAW

A taxpayer who uses his or her automobile for business purposes may deduct the business portion of the actual operation and maintenance expenses of the vehicle, plus depreciation (subject to the limitations of sec. 280F). If the taxpayer is an employee and these expenses are not reimbursed, the deduction is subject to the two-percent floor. Alternatively, the taxpayer may elect to utilize a standard mileage rate in computing the deduction allowable for business use of an automobile that has not been fully depreciated. Under this election, the taxpayer's deduction equals the applicable rate multiplied by the number of miles driven for business purposes and is taken in lieu of deductions for depreciation and actual operation and maintenance expenses.

An employee of the U.S. Postal Service may compute his or her deduction for business use of an automobile in performing services involving the collection and delivery of mail on a rural route by using, for all business use mileage, 150 percent of the standard mileage rate.

HOUSE BILL

The House bill repeals the special rate of 150 percent of the standard mileage rate. In its place, the bill provides that the rate of reimbursement provided by the Postal Service to rural letter carriers is considered to be equivalent to their expenses. The rate of reimbursement that is considered to be equivalent to their expenses is the rate of reimbursement contained in the 1991 collective bargaining agreement, which may in the future be increased by no more than the rate of inflation.

Effective date.—The provision is effective for taxable years beginning after December 31, 1991.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate agreement.

10. Simplification of earned income tax credit

PRESENT LAW

Eligible low-income workers are able to claim a refundable earned income tax credit (EITC) of up to 17.6 percent of the first $7,520 of earned income for 1992 (18.4 percent for taxpayers with more than one qualifying child). The maximum amount of credit for 1992 is $1,324 ($1,384 for taxpayers with more than one qualifying child). This maximum credit is reduced by 12.57 percent of earned income (or adjusted gross income, if greater) in excess of $11,840 (13.14 percent for taxpayers with more than one qualifying child). The EITC is totally phased out for workers with earned income (or adjusted gross income, if greater) over $22,370. The maximum amount of earned income on which the EITC may be claimed and the income threshold for the phaseout of the EITC are indexed for inflation. Earned income consists of wages, salaries, other employee compensation, and net self-employment income.

The credit rates for the EITC change over time under present law, as shown in the following table.

Year	One qualifying child—		Two or more qualifying children—	
	Credit rate	Phaseout rate	Credit rate	Phaseout rate
1992	17.6	12.57	18.4	13.14
1993	18.5	13.21	19.5	13.93
1994 and after	23.0	16.43	25.0	17.86

A supplemental young child credit is available to taxpayers with qualifying children under the age of one year. This young child credit rate is 5 percent and the phase-out rate is 3.57 percent. It is computed on the same income base as the ordinary EITC. The maximum supplemental young child credit for 1992 is $376. If a taxpayer claims the supplemental young child credit, the child that qualifies the taxpayer for such credit is not a qualifying individual for purposes of the dependent care tax credit (sec. 21).

A supplemental health insurance credit is available to taxpayers who provide health insurance coverage for their qualifying children. This health insurance credit rate is 6 percent and the phase-out rate is 4.285 percent. It is computed on the same income base as the ordinary EITC, but the credit claimed cannot exceed the out-of-pocket cost of the health insurance coverage. In addition, the taxpayer is denied an itemized deduction for medical expenses of qualifying insurance coverage up to the amount of credit claimed. The maximum supplemental health insurance credit for 1992 is $451.

HOUSE BILL

The House bill repeals the supplemental young child credit and the supplemental health insurance credit and increases the basic EITC rate for taxpayers with two or more qualifying children as shown in the following table.

Year	One qualifying child—		Two or more qualifying children—	
	Credit rate	Phaseout rate	Credit rate	Phaseout rate
1992	17.6	12.57	22.2	15.84
1993	18.5	13.21	23.3	16.64
1994 and after	23.0	16.43	28.8	20.58

Effective date.—The provision is effective for taxable years beginning after December 31, 1991.

SENATE AMENDMENT

The Senate amendment permits taxpayers to include all health insurance expenses as medical expenses, subject to the 7.5 percent of adjusted gross income floor on deductible medical expenses, regardless of whether these expenses had been used to claim the health insurance component of the EITC. The amendment also permits a self-employed taxpayer to claim the allowable deduction for health insurance costs and to use the full amount of these expenses that are related to coverage of dependent children to claim the health insurance component of the EITC.

The Senate amendment also permits taxpayers with a qualifying child under the age of 1 year to claim both the young child supplemental EITC and the dependent care tax credit for expenses related to care of the qualifying child.

Effective date.—Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment with the provision effective for taxable years beginning after December 31, 1992.

11. Extension of the earned income tax credit to military personnel stationed overseas

PRESENT LAW

Eligible low-income workers are able to claim a refundable earned income tax credit (EITC) of up to 17.6 percent of the first $7,520 of earned income for 1992 (18.4 percent for taxpayers with more than one qualifying child). The maximum amount of credit for 1992 is $1,324 ($1,384 for taxpayers with more than one qualifying child). This maximum credit is reduced by 12.57 percent of earned income (or adjusted gross income, if greater) in excess of $11,840 (13.14 percent for taxpayers with more than one qualifying child). The EITC is totally phased out for workers with earned income (or adjusted gross income, if greater) over $22,370. The maximum amount of earned income on which the EITC may be claimed and the income threshold for the phaseout of the EITC are indexed for inflation. Earned income consists of wages, salaries, other employee compensation, and net self-employment income.

The credit rates for the EITC change over time under present law, as shown in the following table.

Year	One qualifying child—		Two or more qualifying children—	
	Credit rate	Phaseout rate	Credit rate	Phaseout rate
1992	17.6	12.57	18.4	13.14
1993	18.5	13.21	19.5	13.93
1994 and after	23.0	16.43	25.0	17.86

In order to claim the EITC, a taxpayer must have at least one qualifying child. A qualifying child must meet a relationship test, an age test, and a residence test. Part of the residence test requires that a qualifying child must have the same principal place of abode as the taxpayer, and that this principal place of abode must be located in the United States.

A supplemental young child credit is available to taxpayers with qualifying children under the age of one year. This young child credit rate is 5 percent and the phase-out rate is 3.57 percent. It is computed on the same income base as the ordinary EITC.

A supplemental health insurance credit is available to taxpayers who provide health insurance coverage for their qualifying children. This health insurance credit rate is 6 percent and the phase-out rate is 4.285 percent. It is computed on the same income base as the ordinary EITC, but the credit claimed cannot exceed the out-of-pocket cost of the health insurance coverage.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the EITC to United States military personnel stationed overseas. For purposes of determining whether a qualifying child meets the residence test, a member of the military stationed outside the United States on extended active duty would be considered as maintaining a place of abode in the United States.

The Senate amendment also requires that military personnel receive annual reports of earned income (which includes amounts received as basic allowances for housing and subsistence). This increased information reporting is intended to allow military personnel claiming the EITC to more accurately determine the actual amount of EITC to which they are entitled.

Effective date.—Extension of the EITC to military personnel stationed overseas is effective for taxable years beginning after December 31, 1992. The increased information reporting is effective for remuneration paid after December 31, 1992.

Conference Agreement

The conference agreement follows the Senate amendment.

B. Pension Simplification

1. *Simplified distribution rules*

Present Law

In general

Under present law, as amended by the Unemployment Compensation Amendments of 1992 (P.L. 102-318) (the Unemployment Act) for years after 1992, a distribution of benefits from a tax-favored retirement arrangement generally is includible in gross income in the year it is paid or distributed under the rules relating to the taxation of annuities. A tax-favored retirement arrangement includes (1) a qualified pension plan (sec. 401(a)), (2) a qualified annuity plan (sec. 403(a)), and (3) a tax-sheltered annuity (sec. 403(b)). Special rules apply in the case of lump-sum distributions from a qualified plan, distributions that are rolled over to an individual retirement arrangement (IRA), and employer-provided death benefits.

The Unemployment Act provides that any portion of a distribution from a qualified pension or annuity plan or a tax-sheltered annuity (other than a minimum required distribution) can be rolled over tax free to an individual retirement arrangement (IRA) or another qualified plan or annuity, unless the distribution is one of a series of substantially equal payments made (1) over the life or life expectancy of the participant (or the joint lives or life expectancies of the participant and his or her beneficiary), or (2) over a specified period of 10 years or more.

A plan must provide the participant the option of having an eligible rollover distribution transferred directly from the plan to an IRA or another plan. If the participant does not elect the direct transfer option, then withholding is required at a rate of 20 percent.

Special rules for lump-sum distributions

Lump-sum distributions from qualified plans and annuities are eligible for special 5-year forward income averaging. A taxpayer is permitted to make an election with respect to a lump-sum distribution received on or after the employee attains age 59½ to use 5-year forward income averaging under the tax rates in effect for the taxable year in which the distribution is made. Only one such election on or after age 59½ may be made with respect to any employee.

Special transition rules in the Tax Reform Act of 1986 are available with respect to an employee who attained age 50 before January 1, 1986. Under these rules, an individual, trust, or estate may elect to use 5-year forward income averaging (using present-law rates) or 10-year forward income averaging (using prior-law rates) with respect to a single lump-sum distribution, without regard to whether the employee has attained age 59½. In addition, an individual, trust, or estate receiving a lump-sum distribution with respect to such an employee may elect to retain the capital gains character of the pre-1974 portion of the lump-sum distribution (using a tax rate of 20 percent).

Under present law, a 15 percent excise tax is imposed on excess distributions from qualified plans (sec. 4980A). Excess distributions are aggregate distributions from qualified retirement plans made with respect to an individual during any calendar year to the extent the distributions exceed the greater of (1) $150,000, or (2) $112,500 (indexed). A special higher ceiling applies for purposes of determining excess distributions for any calendar year in which an individual receives a lump-sum distribution to which special 5- or 10-year forward income averaging applies. The higher ceiling is 5 times the otherwise applicable ceiling for the calendar year ($750,000 in 1992).

Employer-provided death benefits

Under present law, the beneficiary or estate of a deceased employee generally can exclude up to $5,000 in benefits paid by or on behalf of an employer by reason of the employee's death (sec. 101(b)).

Recovery of basis

Qualified plan distributions other than lump-sum distributions generally are includible in gross income in the year they are paid or distributed under the rules relating to taxation of annuities (sec. 402). Amounts received as an annuity generally are includible in income in the year received, except to the extent they represent the return of the recipient's investment in the contract (i.e., basis) (sec. 72). Under present law, a pro-rata basis recovery rule generally applies, so that the portion of any annuity payment that represents nontaxable return of basis is determined by applying an exclusion ratio equal to the employee's total investment in the contract divided by the total expected payments over the term of the annuity.

The total expected payments depend on the form of the payment, e.g., a single-life annuity, an annuity with payments guaranteed for a specified number of years, or a joint and survivor annuity. For example, if benefits are paid in the form of an annuity during the life of the employee, the expected payments are calculated by multiplying the annual payment amount by the employee's life expectancy on the annuity starting date. If benefits are paid in the form of a joint and survivor annuity, then the total expected return depends on the life expectancies of both the primary annuitant and the person who is to receive the survivor annuity. The IRS has issued tables of life expectancies that are used to calculate expected returns.

Under a simplified alternative method provided by the Internal Revenue Service (IRS) (Notice 88-118) for payments from or under qualified retirement arrangements, the taxable portion of qualifying annuity payments is determined under a simplified exclusion ratio method. Under the simplified method, the portion of each annuity payment that represents nontaxable return of basis is equal to the employee's total investment in the contract (including the $5,000 death benefit exclusion under section 101(b), to the extent applicable), divided by the number of anticipated payments listed in a table published by the IRS. The number of anticipated payments listed in the table is based on the employee's age on the

annuity starting date. The simplified method is available if (1) the annuity payments depend on the life expectancy of the recipient (or the joint lives of the recipient and his or her beneficiary), and (2) the recipient is less than age 75 on the annuity starting date or there are fewer than 5 years of guaranteed payments under the annuity.

Under both the pro rata and simplified alternative methods, in no event can the total amount excluded from income as nontaxable return of basis be greater than the recipient's total investment in the contract.

Required distributions

Present law provides uniform minimum distribution rules generally applicable to all types of tax-favored retirement vehicles, including qualified plans and annuities, IRAs, and tax-sheltered annuities.

Under present law, a qualified plan is required to provide that the entire interest of each participant will be distributed beginning no later than the participant's required beginning date (sec. 401(a)(9)). The required beginning date is generally April 1 of the calendar year following the calendar year in which the plan participant or IRA owner attains age 70½.

HOUSE BILL

Eligible rollover distributions and trustee-to-trustee transfers

The House bill contains provisions relating to rollover and trustee-to-trustee transfers that are substantially the same as the provisions enacted in the Unemployment Act (other than the 20 percent withholding provision).

Special rules for lump-sum distributions

The bill repeals the special 5-year forward income averaging rule. The bill preserves the transition rules adopted in the Tax Reform Act of 1986.

Employer-provided death benefits

The bill repeals the exclusion from gross income of up to $5,000 in employer-provided death benefits.

Recovery of basis

Under the bill, the portion of an annuity distribution from a qualified retirement plan, qualified annuity, or tax-sheltered annuity that represents nontaxable return of basis generally is determined under a method similar to the present-law simplified alternative method provided by the Internal Revenue Service. Under the simplified method provided in the bill, the portion of each annuity payment that represents nontaxable return of basis generally is equal to the employee's total investment in the contract as of the annuity starting date, divided by the number of anticipated payments determined by reference to the age of the participant listed in the table set forth in the bill. The number of anticipated payments listed in the table is based on the employee's age on the annuity starting date. If the number of payments is fixed under the

terms of the annuity, that number is to be used instead of the number of anticipated payments listed in the table.

The simplified method does not apply if the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity. If in connection with commencement of annuity payments, the recipient receives a lump-sum payment that is not part of the annuity stream, such payment is taxable under the rules relating to annuities (sec. 72) as if received before the annuity starting date, and the investment in the contract used to calculate the simplified exclusion ratio for the annuity payments is reduced by the amount of the payment. As under present law, in no event will the total amount excluded from income as nontaxable return of basis be greater than the recipient's total investment in the contract.

Minimum required distributions

No provision.

Effective dates

The provisions are generally effective for years beginning after December 31, 1992.

SENATE AMENDMENT

Eligible rollover distributions and trustee-to-trustee transfers

No provision.

Special rules for lump-sum distributions

The Senate amendment is the same as the House bill with respect to averaging. The Senate amendment modifies the operation of the tax on excess distributions.

Under the Senate amendment, the special higher ceiling (5 times the otherwise applicable ceiling) for purposes of determining the excise tax on excess distributions from qualified plans applies for any calendar year in which an individual receives a lump-sum distribution from a qualified plan, without regard to whether special 5- or 10-year forward income averaging applies. An individual can make such an election only once. The election is not available if the special higher ceiling applied to an individual in a taxable year prior to the effective date of the provision.

Employer-provided death benefits

The Senate amendment is the same as the House bill.

Recovery of basis

The Senate amendment is the same as the House bill.

Minimum required distributions

The Senate amendment modifies the rule that requires all participants in qualified plans to commence distributions by age 70½ without regard to whether the participant is still employed by the employer and generally replaces it with the rule in effect prior to the Tax Reform Act. Under the amendment, distributions generally are required to begin by April 1 of the calendar year following

the later of (1) the calendar year in which the employee attains age 70½ or (2) the calendar year in which the employee retires. However, in the case of a 5-percent owner of the employer, distributions are required to begin no later than the April 1 of the calendar year following the year in which the 5-percent owner attains age 70½. Distributions from an IRA are required to begin no later than April 1 of the calendar year following the year in which the IRA owner attains age 70½.

In addition, in the case of an employee (other than a 5-percent owner) who retires in a calendar year after attaining age 70½, the Senate amendment generally requires the employee's accrued benefit to be actuarially increased to take into account the period after age 70½ in which the employee was not receiving benefits under the plan. Thus, under the amendment, the employee's accrued benefit is required to reflect the value of benefits that the employee would have received if the employee had retired at age 70½ and had begun receiving benefits at that time.

Effective dates

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

Eligible rollover distributions and trustee-to-trustee transfers

The conference agreement does not contain the provisions in the House bill.

Special rules for lump-sum distributions

The conference agreement follows the House bill and the Senate amendment with respect to averaging, and the Senate amendment with respect to the modification of the excess distribution tax.

Employer-provided death benefits

The conference agreement follows the House bill and the Senate amendment.

Recovery of basis

The conference agreement follows the House bill and the Senate amendment.

Minimum required distributions

The conference agreement follows the Senate amendment.

Effective dates

The conference agreement follows the House bill and the Senate amendment.

2. Increased access to pension plans

a. Plans of small employers

PRESENT LAW

Under present law, certain employers (other than tax-exempt and governmental employers) can establish a simplified employee pension (SEP) for the benefit of their employees under which the employees can elect to have contributions made to the SEP or to receive the contributions in cash (sec. 408(k)(6)). If an employee elects to have contributions made on the employee's behalf to the SEP, the contribution is not treated as having been distributed or made available to the employee. In addition, the contribution is not treated as an employee contribution merely because the SEP provides the employee with such an election. Therefore, an employee is not required to include in income currently the amounts the employee elects to have contributed to the SEP. Elective deferrals under a SEP are to be treated in the same manner as elective deferrals under a qualified cash or deferred arrangement and, thus, are subject to the $8,728 (for 1992) cap on elective deferrals.

The election to have amounts contributed to a SEP or received in cash is available only if at least 50 percent of the employees of the employer elect to have amounts contributed to the SEP. In addition, such election is available for a taxable year only if the employer maintaining the SEP had 25 or fewer eligible employees at all times during the prior taxable year.

Under present law, elective deferrals under SEPs are subject to nondiscrimination standards. The amount eligible to be deferred as a percentage of each highly compensated employee's compensation (i.e., the deferral percentage) is limited by the average deferral percentage (based solely on elective deferrals) for all nonhighly compensated employees who are eligible to participate. The deferral percentage for each highly compensated employee (taking into account only the first $222,220 (indexed) of compensation) cannot exceed 125 percent of the average deferral percentage for all other eligible employees. Nonelective SEP contributions may not be combined with the elective SEP deferrals for purposes of this test. An employer may not make any other SEP contributions conditioned on elective SEP deferrals. If the 125-percent test is not satisfied, rules similar to the rules applicable to excess contributions to a cash or deferred arrangement are applied.

If any employee is eligible to make elective SEP deferrals, all employees satisfying the participation requirements must be eligible to make elective SEP deferrals. An employee satisfies the participation requirements if the employee (1) has attained age 21, (2) has performed services for the employer during at least 3 of the immediately preceding 5 years, and (3) received at least $363 (indexed) in compensation from the employer for the year. An employee can participate even though he or she is also a participant in one or more other qualified retirement plans sponsored by the employer. However, SEP contributions are added to the employer's contribution to the other plans on the participant's behalf in applying the limits on contributions and benefits (sec. 415).

HOUSE BILL

No provision.

SENATE AMENDMENT

Simplified employee pensions (SEPs)

The Senate amendment conforms the eligibility requirements for SEP participation to the rules applicable to pension plans generally by providing that contributions to a SEP must be made with respect to each employee who has at least one year of service with the employer.

The Senate amendment modifies the rules relating to salary reduction SEPs by providing that such SEPs may be established by employers with 100 or fewer employees. The Senate amendment also repeals the requirement that at least half of eligible employees actually participate in a salary reduction SEP.

The Senate amendment also provides that an employer is deemed to satisfy the nondiscrimination requirements applicable to salary reduction SEPs if the plan satisfies the safe harbor nondiscrimination rules applicable to qualified cash or deferred arrangements and employees are notified of the availability and features of the SEP.

PRIME ("private retirement incentives matched by employers") accounts

The Senate amendment creates another simplified retirement plan targeted to small businesses called the PRIME ("private retirement incentives matched by employers") account (new sec. 408(p)). A PRIME account is an individual retirement plan with respect to which employees can make salary reduction contributions of up to $3,000 per year, with a 100 percent employer match up to 3 percent of the employee's compensation contributed to the account. No nondiscrimination rules apply to PRIME accounts. Simplified reporting requirements apply. PRIME accounts are subject to the same spousal consent rules applicable to defined contribution plans.

Only employers who normally employ fewer than 100 employees and who do not maintain a qualified plan or a SEP may establish PRIME accounts for their employees. All employees of the employer who have at least one year of service and who are reasonably expected to work at least 1,200 hours during the year must be eligible to participate in the PRIME account. All contributions to an employee's PRIME account are fully vested. Additional early withdrawal penalties apply to preretirement withdrawals during the first 3 years of participation.

A common trust fund or common investment fund of PRIME account assets generally is treated as a common trust fund or common investment fund of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a). Accordingly, PRIME accounts can be invested by financial organizations in collective investment funds to the same extent, and under the same conditions, as qualified retirement plans. Any load or other fees im-

posed by any financial organization maintaining a PRIME account must be reasonable.

Effective date

The provisions apply to years beginning after December 31, 1993.

Conference Agreement

Simplified employee pensions

The conference agreement follows the Senate amendment, except that the conference agreement does not adopt the provision in the Senate amendment that modifies the 3-out-of-5 year SEP eligibility rules, and does not apply the section 401(k) safe harbor rule to salary reduction SEPs.

PRIME accounts

The conference agreement does not follow the Senate amendment.

b. Repeal of limitation on ability of nongovernmental tax-exempt employers to maintain cash or deferred arrangements

Present Law

Under present law, if a tax-qualified profit-sharing or stock bonus plan meets certain requirements, then an employee is not required to include in income any employer contributions to the plan merely because the employee could have elected to receive the amount contributed in cash (sec. 401(k)). Plans containing this feature are referred to as cash or deferred arrangements. Tax-exempt organizations are generally prohibited from establishing qualified cash or deferred arrangements. Because of this limitation, many of such employers are precluded from maintaining broad-based, funded, elective deferral arrangements for their employees.

House Bill

The House bill allows nongovernmental tax-exempt organizations to maintain cash or deferred arrangements. As under present law, the limitation on the amount that may be deferred by an individual participating in both a cash or deferred arrangement and another elective deferral arrangement applies.

Effective date.—The provision applies to nongovernmental tax-exempt organizations with respect to years beginning after December 31, 1992. The provision does not affect the ability of certain State and local government employers to maintain qualified cash or deferred arrangements that were adopted before May 6, 1986.

Senate Amendment

The Senate amendment is the same as the House bill. In addition, the Senate amendment clarifies that any organization, including an Indian tribe, previously denied eligibility on the ground that they are a tax-exempt organization (and not because they are a

State or local government or agency or instrumentality thereof) is eligible to maintain a cash or deferred arrangement for its employees under the bill. As under present law, the limitation on the amount that may be deferred by an individual participating in both a cash or deferred arrangement and another elective deferral arrangement applies.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

c. Duties of master and prototype plan sponsors

PRESENT LAW

The Internal Revenue Service (IRS) master and prototype program is an administrative program under which trade and professional associations, banks, insurance companies, brokerage houses, and other financial institutions can obtain IRS approval of model retirement plan language and then make these preapproved plans available for adoption by their customers, investors, or association members. Rules regarding who can sponsor master and prototype programs, the prescribed format of the model plans, and other matters relating to the program are contained in revenue procedures and other administrative pronouncements of the IRS.

The IRS also maintains related administrative programs that authorize advance approval of model plans prepared by law firms and others, i.e., the regional prototype plan program and volume submitter program.

HOUSE BILL

The House bill authorizes the IRS to define the duties of organizations that sponsor master and prototype, regional prototype, and other preapproved plans, including mass submitters. These duties would become a condition of sponsoring preapproved plans. The bill is not intended to be interpreted as diminishing the IRS's administrative authority with respect to the master and prototype, regional prototype, or similar programs, including the authority to define who is eligible to sponsor prototype plans, or to create other rules relating to these programs. Rather, it is intended to create a system of sponsor accountability, subject to IRS monitoring, that will give adopters of master and prototype and other preapproved plans a level of protection, comparable to that in the regional prototype plan program, against failure of master and prototype and other plan sponsors to fulfill certain obligations.

The bill thus authorizes the IRS to prescribe duties of sponsors of prototype and other preapproved plans that include, but are not limited to, maintaining annually current lists of adopting employers and providing certain annual notices to adopting employers and to the IRS. While reflecting the IRS's own requirements in its regional prototype plan procedure, the bill does not require the IRS to mandate a master and prototype accountability system that is identical to the regional prototype plan procedure. The bill also authorizes the IRS to prescribe such other reasonable duties as are consistent with the objective of protecting adopting employers from

a sponsor's failure to amend a plan in a timely manner or to communicate amendments or other notices required by the IRS's procedures.

The bill authorizes the IRS to define the duties of preapproved plan sponsors that relate to providing administrative services to the plans of adopting employers. This authorization is not intended to obligate sponsors to undertake the complete day-to-day administration of the plans they sponsor (although it does not preclude the IRS from mandating the performance of specific functions), but rather to protect employers against loss of qualification merely because they are unaware of the need to arrange for such services, or the unavailability of professional assistance from parties familiar with the sponsor's plan.

It is thus intended that, at a minimum, sponsors should (1) advise adopting employers that failure to arrange for administrative services to the plan may significantly increase the risk of disqualification and resulting sanctions, and (2) furnish employers with the name of firms that are familiar with the plan and can provide professional administrative service. This is not intended to preclude the sponsor from providing that service itself.

The bill should not be construed as creating fiduciary relationships or responsibilities under Title I of ERISA that would not exist in the absence of the provision.

To the extent deemed reasonably necessary to carry out the purposes of this provision of the bill, the Secretary is authorized to issue regulations that permit the relaxation of the anti-cutback rules contained in ERISA (sec. 204(g)) and the Code (sec. 411(d)(6)) when employers replace an individually designed plan with an IRS model plan, provided that the rights of participants to accrued benefits under the individually designed plan are not significantly impaired. This discretion will facilitate the shift by employers from individually designed plans to IRS model plans.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Nondiscrimination provisions

a. Simplification of nondiscrimination tests applicable under sections 401 (k) and (m)

PRESENT LAW

A profit-sharing or stock bonus plan, a pre-ERISA money purchase pension plan, or a rural cooperative plan may include a qualified cash or deferred arrangement (sec. 401(k)). Under such an arrangement, an employee may elect to have the employer make payments as contributions to a plan on behalf of the employee, or

to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals. The maximum annual amount of elective deferrals that can be made by an individual is $8,728 for 1992. This dollar limit is indexed annually for inflation. A special nondiscrimination test applies to cash or deferred arrangements.

The special nondiscrimination test applicable to elective deferrals under qualified cash or deferred arrangements is satisfied if the actual deferral percentage (ADP) for eligible highly compensated employees for a plan year is equal to or less than either (1) 125 percent of the ADP of all nonhighly compensated employees eligible to defer under the arrangement, or (2) the lesser of 200 percent of the ADP of all eligible nonhighly compensated employees or such ADP plus 2 percentage points. The ADP for a group of employees is the average of the ratios (calculated separately for each employee in the group) of the contributions paid to the plan on behalf of the employee to the employee's compensation.

Employer matching contributions and after-tax employee contributions under qualified defined contribution plans are subject to a special nondiscrimination test similar to the special nondiscrimination test applicable to qualified cash or deferred arrangements.

The special nondiscrimination test for employer matching contributions and after-tax employee contributions is satisfied for a plan year if the actual contribution percentage (ACP) for eligible highly compensated employees does not exceed the greater of (1) 125 percent of the ACP for all other eligible employees, or (2) the lesser of 200 percent of the contribution percentage for all other eligible employees, or such percentage plus 2 percentage points. The ACP for a group of employees for a plan year is the average of the ratios (calculated separately for each employee in the group) of the sum of matching and employee contributions on behalf of each such employee to the employee's compensation for the year.

To determine the amount of excess contributions and the employees to whom they are allocated, the elective deferrals of highly compensated employees are reduced in the order of their actual deferral percentage beginning with those highly compensated employees with the highest actual deferral percentages.

HOUSE BILL

Look-back rule

The House bill modifies the present-law nondiscrimination test applicable to elective deferrals and employer matching and after-tax employee contributions to require the use of the average deferral percentage for nonhighly compensated employees for the preceding plan year to be used in determining the permitted average deferral percentage for highly compensated employees for the current year. In the case of the first plan year of a qualified cash or deferred arrangement, the average deferral percentage for nonhighly compensated employees for the previous year is deemed to be 3 percent or, at the election of the employer, the average deferral percentage for the first plan year.

Safe harbor for cash or deferred arrangements

In general.—The bill adds alternative methods of satisfying the special nondiscrimination requirements applicable to elective deferrals and employer matching contributions. Under these safe harbor rules, a cash or deferred arrangement is treated as satisfying the actual deferral percentage test if the plan of which the arrangement is a part (or any other plan of the employer maintained with respect to the employees eligible to participate in the cash or deferred arrangement) meets (1) one of two contribution requirements and (2) a notice requirement. A plan satisfies the safe harbor with respect to matching contributions if (1) the plan meets the contribution and notice requirements under the safe harbor for cash or deferred arrangements and (2) the plan satisfies a special limitation on matching contributions. These safe harbors permit a plan to satisfy the special nondiscrimination tests through plan design, rather than through the testing of actual contributions.

Contribution requirements.—A plan satisfies the contribution requirements under the safe harbor rule for qualified cash or deferred arrangements if (1) the plan satisfies a matching contribution requirement or (2) the employer makes a nonelective contribution to a defined contribution plan of at least 3 percent of an employee's compensation on behalf of each nonhighly compensated employee who is eligible to participate in the arrangement without regard to whether the employee makes elective contributions under the arrangement.

A plan satisfies the matching contribution requirement if, under the arrangement: (1) the employer makes a matching contribution on behalf of each nonhighly compensated employee that is not less than (a) 100 percent of the employee's elective contributions up to 3 percent of compensation and (b) 50 percent of the employee's elective contributions from 3 to 5 percent of compensation; and (2) the level of match for highly compensated employees is not greater than the match rate for nonhighly compensated employees at any level of compensation.

Alternatively, if the matching contribution requirement is not satisfied at some level of employee compensation, the requirement is deemed to be satisfied if (1) the level of employer matching contributions does not increase as employee elective contributions increase and (2) the aggregate amount of matching contributions with respect to elective contributions up to that level of compensation at least equals the amount of matching contributions that would be made if matching contributions satisfied the percentage requirements. For example, the alternative test is satisfied if an employer matches 125 percent of an employee's elective contributions up to the first 3 percent of compensation, 25 percent of elective deferrals from 3 to 4 percent of compensation, and provides no match thereafter. This is because the employer match does not increase with the employee's contributions and the aggregate amount of matching contributions is at least equal to the matching contributions required under the general safe harbor rule.

Under the safe harbor, an employee's rights to employer matching contributions or nonelective contributions used to meet

the contribution requirements are required to be 100-percent vested.

An arrangement does not satisfy the contribution requirements unless the requirements are met without regard to the permitted disparity rules (sec. 401(l)) and contributions used to satisfy the contribution requirements are not taken into account for purposes of determining whether an employer's plan satisfies the permitted disparity rules.

Employer matching and nonelective contributions used to satisfy the contribution requirements of the safe harbor rules are nonforfeitable and subject to the restrictions on withdrawals that apply to an employee's elective deferrals under a qualified cash or deferred arrangement (sec. 401(k)(2) (B) and (C)).

The matching or nonelective contribution safe harbor requirements are deemed satisfied if the employer maintains another qualified plan that meets such requirements.

Notice requirement.—The notice requirement is satisfied if each employee eligible to participate in the arrangement is given written notice within a reasonable period before any year of the employee's rights and obligations under the arrangement. This notice must be sufficiently accurate and comprehensive to apprise the employee of his or her rights and obligations and must be written in a manner calculated to be understood by the average employee eligible to participate.

Alternative method of satisfying special nondiscrimination test for matching contributions

The bill provides a safe harbor method of satisfying the special nondiscrimination test applicable to employer matching contributions. Under this safe harbor, a plan is treated as meeting the special nondiscrimination test if (1) the plan meets the contribution and notice requirements applicable under the safe harbor method of satisfying the special nondiscrimination requirement for qualified cash or deferred arrangements, and (2) the plan satisfies a special limitation on matching contributions.

The limitation on matching contributions is satisfied if (1) the matching contributions on behalf of any employee may not be made with respect to employee contributions or elective deferrals in excess of 6 percent of compensation and (2) the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase.

Effective date

The provision is effective for plan years beginning after December 31, 1992.

SENATE AMENDMENT

Look-back rule

The Senate amendment is the same as the House bill.

Safe harbor for cash or deferred arrangements

The Senate amendment is the same as the House bill.

Alternative method of satisfying special nondiscrimination test for matching contributions

The Senate amendment is the same as the House bill.

Distribution of excess contributions

Under the Senate amendment, the total amount of excess contributions is determined in the same manner as under present law, but the distribution of excess contributions is required to be made on the basis of the amount of contribution by, or on behalf of, each highly compensated employee. Thus, under the Senate amendment, excess contributions are deemed attributable first to those highly compensated employees who have made the greatest dollar amount of elective deferrals under the plan.

For example, assume that an employer maintains a qualified cash or deferred arrangement under section 401(k). Assume further that the actual deferral percentage ("ADP") for the eligible non-highly compensated employees is 2 percent. In addition, assume the following facts with respect to the eligible highly compensated employees:

Employee	Compensation	Deferral	Deferral (percent)
A	$200,000	$7,000	3.5
B	200,000	7,000	3.5
C	70,000	7,000	10.0
D	70,000	5,250	7.5
E	70,000	2,100	3.0
F	70,000	1,750	2.5

Under these facts, the highly compensated employees' (A and B) ADP is 5 percent, which fails to satisfy the special nondiscrimination requirements.

Under present law, the highly compensated employees with the highest deferral percentages would have their deferrals reduced until the ADP of the highly compensated employees is 4 percent. Accordingly, C and D would have their deferrals reduced to $4,025 (i.e., a deferral percentage of 5.75 percent). Thus, the reduction under present law would be $2,975 for C and $1,225 for D, for a total reduction of $4,200.

Under the Senate amendment, the amount of the total reduction is calculated in the same manner as under present law so that the total reduction remains $4,200. However, this total reduction of $4,200 is allocated to highly compensated employees based on the employees with the largest contributions. Thus, A, B, and C would each be reduced by $1,400 from $7,000 to $5,600. The ADP test would not be performed again.

Effective date

The provision is effective for plan years beginning after December 31, 1993.

CONFERENCE AGREEMENT

Look-back rule

The conference agreement follows the House bill and the Senate amendment.

Safe harbor for cash or deferred arrangements

The conference agreement follows the House bill and the Senate amendment.

Alternative method of satisfying special nondiscrimination test for matching contributions

The conference agreement follows the House bill and the Senate amendment.

Distribution of excess contributions

The conference agreement follows the Senate amendment, but clarifies that it is intended that the modified distribution method also applies to excess contributions that are treated as distributed to an employee and then contributed by the employee to the plan (recharacterization). In addition, it is intended that the Secretary interpret and apply the section 401(k) and 401(m) nondiscrimination tests in a manner consistent with the modified distribution rule. For example, a plan will not fail to be a qualified cash or deferred arrangement merely because the plan fails to satisfy the section 401(k) nondiscrimination test after excess contributions are distributed or recharacterized under the modified distribution rule.

Effective date

The conference agreement follows the Senate amendment.

b. Definition of highly compensated employee and family aggregation rules

PRESENT LAW

In general

For purposes of the rules applying to qualified retirement plans under the Code, an employee, including a self-employed individual, is treated as highly compensated with respect to a year if, at any time during the year or the preceding year, the employee: (1) was a 5-percent owner of the employer; (2) received more than $93,518 in annual compensation from the employer; (3) received more than $62,345 in annual compensation from the employer and was one of the top-paid 20 percent of employees during the same year; or (4) was an officer of the employer who received compensation greater than $56,111. These dollar amounts are adjusted annually for inflation at the same time and in the same manner as the adjustments to the dollar limit on benefits under a defined benefit pension plan (sec. 415(d)). If, for any year, no officer has compensation in excess of $56,111 (indexed), then the highest paid officer of the employer for such year is treated as a highly compensated employee.

An employee is not treated as in the top-paid 20 percent, as an officer, or as receiving $93,518 or $62,345 solely because of the employee's status during the current year, unless such employee also is among the 100 employees who have received the highest compensation during the year.

Election to use simplified method

Employers are permitted to elect to determine their highly compensated employees under a simplified method. Under this method, an electing employer may treat employees who received more than $62,345 in annual compensation from the employer as highly compensated employees in lieu of applying the $93,518 threshold and without regard to whether such employees are in the top-paid group of the employer. This election is available only if at all times during the year the employer maintained business activities and employees in at least 2 geographically separate areas.

Family aggregation rules

A special rule applies with respect to the treatment of family members of certain highly compensated employees. Under the special rule, if an employee is a family member of either a 5-percent owner or 1 of the top 10 highly compensated employees by compensation, then any compensation paid to such family member and any contribution or benefit under the plan on behalf of such family member is aggregated with the compensation paid and contributions or benefits on behalf of the 5-percent owner or the highly compensated employee in the top 10 employees by compensation. Therefore, such family member and employee are treated as a single highly compensated employee. An individual is considered a family member if, with respect to an employee, the individual is a spouse, lineal ascendant or descendant, or spouse of a lineal ascendant or descendant of the employee.

Similar family aggregation rules apply with respect to the $228,860 limit on compensation that may be taken into account under a qualified plan (sec. 401(a)(17)) and for deduction purposes (sec. 404(l)). However, under such provisions, only the spouse of the employee and lineal descendants of the employee who have not attained age 19 are taken into account.

HOUSE BILL

The House bill replaces the present-law test for determining who is a highly compensated employee with a simplified test. The bill provides that an employee is highly compensated for a year if, at any time during the year or the preceding year, the employee (1) was a 5-percent owner of the employer, or (2) received compensation in excess of $62,345. This dollar amount is adjusted annually for inflation at the same time and in the same manner as the adjustments to the dollar limit on benefits under a defined benefit pension plan (sec. 415(d)). An employee is not treated as receiving $62,345 solely because of the employee's status during the current year, unless such employee also is among the 100 employees who have received the highest compensation during the year.

Under the bill, if no employee is treated as being highly compensated under the rules described above, then the employee with the highest compensation for the year is generally treated as a highly compensated employee. However, this rule does not apply in the case of a plan maintained by tax-exempt organization if the plan (1) provides a nonforfeitable right to 100 percent of an employee's accrued benefit, (2) covers a fair section of employees, determined on the basis of their compensation, and (3) was in effect on February 1, 1992, and at all times thereafter.

The bill repeals the family aggregation rules.

Effective date.—The provision is effective for years beginning after December 31, 1992.

SENATE AMENDMENT

The Senate amendment provides that an employee is highly compensated with respect to a year if the employee (1) was a 5-percent owner of the employer at any time during the year or the preceding year, or (2) had compensation for the preceding year in excess of the dollar limit for the preceding year. The dollar limit is $50,000 (indexed). The $50,000 threshold is adjusted for cost-of-living increases in the same manner as the limitations on contributions and benefits (sec. 415(d)). Under the Senate amendment, as under present law, the dollar limit in effect (i.e., the indexed value of $50,000) for 1992 is $62,345. For example, in determining whether an employee is highly compensated in 1993, the employee's compensation for 1992 would be compared to the 1992 dollar limit, i.e., $62,345.

Under the Senate amendment, if no employee is a 5-percent owner or has compensation in excess of $50,000 (indexed), then the highest paid officer for the year is treated as a highly compensated employee. This special rule does not apply for purposes of the nondiscrimination rules applicable to elective deferrals, matching contributions, and employee contributions (secs. 401(k) and (m)), and does not apply with respect to employees of tax-exempt organizations and State and local governments (sec. 457(e)(1)).

The Senate amendment repeals the family aggregation rules.

Effective date.—The provision is effective for years beginning after December 31, 1993, except that an employer may elect not to have the provision apply to years beginning in 1994.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that there are no exceptions from the special rule that provides that if no employee is a 5-percent owner or has compensation in excess of $50,000 (indexed), then the highest paid officer for the year is treated as a highly compensated employee.

Effective date.—The provision is effective for years beginning after December 31, 1993.

c. Election to treat base pay as compensation

PRESENT LAW

Present law provides a definition of compensation that is to be used for nondiscrimination testing purposes (sec. 414 (s)). Under this definition, compensation generally is defined as compensation used for purposes of the limits on contributions and benefits (sec. 415). Pursuant to statutory authority, final regulations provide alternative permissible definitions of compensation. The regulations permit certain items, such as bonuses and similar payments, to be excluded from the definition of compensation.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment permits an employer to elect to use base pay as a permissible definition of compensation for purposes of all provisions which specifically refer to section 414(s) of the Code. It is intended that base pay is defined generally as under Treasury regulations. Thus, subject to the applicable facts and circumstances, the employer could exclude from the definition of compensation, on a consistent basis, certain types of compensation, including (but not limited to) one or more of the following: any type of additional compensation for employees working outside their regularly scheduled duties (such as overtime pay, premiums for shift differential, and call-in premiums); bonuses; or reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation, and welfare benefits. It is intended that the resulting definition may not discriminate in favor of highly compensated employees. The election applies for purposes of all applicable provisions and to all employees, and may be revoked only with the consent of the Secretary.

Effective date.—The provision is effective for years beginning after December 31, 1993.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

d. Modification of additional participation requirements

PRESENT LAW

Under present law, a plan is not a qualified plan unless it benefits no fewer than the lesser of (a) 50 employees of the employer or (b) 40 percent of all employees of the employer (sec. 401(a)(26)). This requirements may not be satisfied by aggregating comparable plans, but may be applied separately to different lines of business of the employer. A line of business of the employer does not qualify as a separate line of business unless it has at least 50 employees.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the minimum participation rule (sec. 401(a)(26)) applies only to defined benefit pension plans (not defined contribution plans). Under the Senate amendment, a defined benefit pension plan is not a qualified plan unless it benefits no fewer than the lesser of 25 employees or 40 percent of all employees of the employer. However, a plan maintained by an employer with only 2 employees must cover both. The excludable employee rule applies as under present law. As an illustration of the operation of the modification of the minimum participation rule, assume that an employer has 150 nonexcludable employees. Under present law, any plan of the employer is required to cover a minimum of 50 employees. Under the Senate amendment, any defined benefit plan of the employer is required to cover a minimum of 25 employees.

In the case of an employer with only 2 employees, the minimum participation rule under the Senate amendment is satisfied only if the plan covers both employees.

The Senate amendment provides that the requirement that a line of business has at least 50 employees does not apply in determining whether a plan satisfied the minimum participation rule on a separate line of business basis.

Effective date.—The provision is generally effective for years beginning after December 31, 1991. An employer may elect to have the provision apply as if it were included in section 1112(b) of the Tax Reform Act of 1986.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the conference agreement does not reduce the number of employees that must be covered under a plan in order to satisfy the minimum participation rule. Thus, under the conference agreement, in general, a defined benefit plan must benefit no fewer than the lesser of 50 employees or 40 percent of all employees of the employer.

Effective date.—The provision is effective for years beginning after December 31, 1991.

4. Miscellaneous pension simplification

a. Definition of leased employee

PRESENT LAW

An individual (a leased employee) who performs services for another person (the recipient) may be required to be treated as the recipient's employee for various employee benefit provisions, even if the individual is not a common law employee. This leased employee relationship may exist if the services are performed pursuant to an agreement between the recipient and a third person (the leasing organization) who is otherwise treated as the individual's

employer (sec. 414(n)). The individual is to be treated as the recipient's employee only if the individual has performed services for the recipient on a substantially full-time basis for a year, and the services are of a type historically performed by employees in the recipient's business field.

An individual who otherwise would be treated as a recipient's leased employee will not be treated as such an employee if the individual participates in a safe harbor plan maintained by the leasing organization meeting certain requirements. This exception does not apply if more than 20 percent of an employer's nonhighly compensated workforce is leased.

HOUSE BILL

Under the House bill, the present-law "historically performed" test is replaced with a new rule defining who must be considered a leased employee. Under the bill, an individual is not considered a leased employee unless the services are performed under any significant direction or control by the service recipient. As under present law, the determination of whether someone is a leased employee is made after determining whether the individual is a common-law employee of the service recipient. Thus, an individual who is not a common-law employee of the service recipient may nevertheless be a leased employee of the service recipient. Similarly, the fact that a person is or is not found to perform services under the significant direction or control of the recipient for purposes of the employee leasing rules is not relevant in determining whether the person is or is not a common-law employee of the recipient for other tax purposes.

Whether services are performed by an individual under any significant direction or control by the service recipient depends on the facts and circumstances.

Effective date.—The provision is effective for years beginning after December 31, 1992, except that the changes do not apply to relationships that have been previously determined by an IRS ruling not to involve leased employees. In applying the leased employee rules to years beginning before the effective date, it is intended that the Secretary use a reasonable interpretation of the statute to apply the leasing rules to prevent abuse.

SENATE AMENDMENT

Under the Senate amendment, the present-law historically performed test is repealed and replaced with a new rule defining who must be considered a leased employee. This change is made because the proposed regulations under the leased employee rules (sec. 414(n)) are overly broad in defining who may be a leased employee. Under the provision, the proposed regulations are no longer valid. One of the principal purposes for adopting the new control test is to relieve the unnecessary hardship and uncertainty created for employers in these circumstances. It is intended that the Secretary interpret and apply the control test in a manner that is targeted to prevent clear abuses.

Under the provision, an individual is not considered a leased employee unless the individual is under the control of the recipient

organization. The determination of whether an individual is controlled by the employer is based on all the facts and circumstances. Among the factors that are relevant in this determination are whether the recipient organization: (1) prescribes the individual's work methods; (2) supervises the individual; (3) sets the individual's working hours; and (4) sets the individual's level of compensation. Other factors that may be considered include those that are relevant for determining whether the employer is responsible for employment taxes on the compensation paid to the individual. The Secretary may designate other relevant factors. It is not necessary that all these factors indicate that the individual is under the control of the employer in order to find that such individual is a leased employee. Nor is it necessary that the recipient organization be responsible for employment taxes in order to find that the individual is a leased employee because, if the recipient organization is liable for employment taxes, the individual is an employee of the organization who generally must be taken into account. The provision does not alter the definition of a common-law employee, nor the rules that such employees are to be taken into account unless specifically excluded.

The changes made by this provision are not intended to broaden the scope of the leased employee rules. Thus, to the extent an individual is not a leased employee under present law, such employee generally will not be a leased employee under the provision. For example, in those specific situations where the Internal Revenue Service has ruled that service relationships do not involve "leased employees" under the test of present law requiring the services to be of a type historically performed, in the business field of the recipient, by employees, the recipients of those rulings may continue to rely on them.

Effective date.—The provision is effective for years beginning after December 31, 1983.

Conference Agreement

The conference agreement generally follows the House bill. Under the conference agreement, as under the House bill, the present-law "historically performed" test is replaced with a new rule defining who must be considered a leased employee. Under the conference agreement, an individual is not considered a leased employee unless such services are performed under significant direction or control by the service recipient. As under present law, the determination of whether someone is a leased employee is made after determining whether the individual is a common-law employee of the service recipient. Thus, an individual who is not a common-law employee of the service recipient may nevertheless be a leased employee of the service recipient. Similarly, the fact that a person is or is not found to perform services under significant direction or control of the recipient for purposes of the employee leasing rules is not determinative of whether the person is or is not a common-law employee of the recipient.

Whether services are performed by an individual under significant direction or control by the service recipient depends on the facts and circumstances. Factors that are relevant in determining

whether significant direction or control exists include whether the individual is required to comply with instructions of the service recipient about when, where, and how he or she is to perform the services, whether the services must be performed by a particular person, whether the individual is subject to the supervision of the service recipient, and whether the individual must perform services in the order or sequence set by the service recipient. Factors that would generally not be relevant in determining whether such direction or control exists include whether the service recipient has the right to hire or fire the individual and whether the individual works for others.

For example, an individual who works under the direct supervision of the service recipient would be considered to be subject to significant direction or control of the service recipient even if another company hired and trained the individual, had the ultimate (but unexercised) legal right to control the individual, paid his wages, withheld his employment and income taxes, and had the exclusive right to fire him. Thus, for example, temporary secretaries, receptionists, word processing personnel and similar office personnel who are subject to the day-to-day control of the employer in essentially the same manner as a common law employee are treated as leased employees if the period of service threshold is reached.

On the other hand, an individual who is a common-law employee of Company A who performs services for Company B on the business premises of the Company B under the supervision of Company A would generally not be considered to be under significant direction or control of Company B. The supervision by Company A must be more than nominal, however, and not merely a mechanism to avoid the literal language of the direction or control test.

An example of the situation in the preceding paragraph might be a work crew that comes into a factory to install, repair, maintain, or modify equipment or machinery at the factory, and that includes a supervisor who is an employee of the equipment (or equipment repair) company and who has the authority to direct and control the crew, and who actually does exercise such direction and control. In this situation, the supervisor and his or her crew are not the leased employees of the manufacturer, even if the supervisor is in frequent communication with the employees of the manufacturer and even if the supervisor and his or her crew are required to comply with the safety and environmental precautions of the manufacturer.

Under the direction or control test, clerical and similar support staff (e.g., secretaries and nurses in a doctor's office) generally would be considered to be subject to significant direction or control of the service recipient and would be leased employees provided the other requirements of section 414(n) are met. On the other hand, outside professionals who maintain their own businesses (e.g., lawyers and accountants) generally would not be considered to be subject to such primary control. However, the Secretary is encouraged to continue efforts to prevent abuses in the leased manager area.

In many cases, the "historically performed" test is overly broad, and results in the unintended treatment of individuals as leased employees. One of the principal purposes for changing the leased employee rules is to relieve the unnecessary hardship and

uncertainty created for employers in these circumstances. However, it is not intended that the direction or control test enable employers to engage in abusive practices. Thus, it is intended that the Secretary interpret and apply the leased employee rules in a manner so as to prevent abuses. This ability to prevent abuses under the leasing rules is in addition to the present-law authority of the Secretary under section 414(o). For example, one potentially abusive situation exists where the benefit arrangements of the service recipient overwhelmingly favor its highly compensated employees, the employer has no or very few nonhighly compensated common-law employees, yet the employer makes substantial use of the services of nonhighly compensated individuals who are not its common-law employees.

Effective date.—The provision is effective for years beginning after December 31, 1992, except that the changes do not apply to relationships that have been previously determined by an IRS ruling not to involve leased employees. In applying the leased employee rules to years beginning before the effective date, it is intended that the Secretary use a reasonable interpretation of the statute to apply the leasing rules to prevent abuse. Relationships that would not be treated as involving leased employees under the standard adopted in the conference agreement are conclusively presumed to be nonabusive.

b. Cost-of-living adjustments

PRESENT LAW

The rules relating to qualified plans contain a number of dollar limits that are indexed annually for cost-of-living adjustments (e.g., the dollar limit on benefits under a defined benefit plan (sec. 415(b)), the limit on elective deferrals under a qualified cash or deferred arrangement (sec. 402(g)), and the dollar amounts used in determining highly compensated employees (sec. 414(q)). The Secretary publishes annually a list of the amounts applicable under each provision for the year.

HOUSE BILL

The House bill provides that the cost-of-living adjustment with respect to any calendar year is based on the increase in the applicable index as of the close of the calendar quarter ending September 30 of the preceding calendar year. Thus, adjusted dollar limits will be published before the beginning of the calendar year to which they apply.

In addition, the bill provides that the dollar limits determined after application of the cost-of-living adjustments are generally rounded to the nearest $1,000. Dollar limits relating to elective deferrals and elective contributions to simplified employee pensions (SEPs) are rounded to the nearest $100.

Effective date.—The provision is effective for years beginning after December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

c. Plans covering self-employed individuals

PRESENT LAW

Prior to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) different rules applied to retirement plans maintained by incorporated employers and unincorporated employers (such as partnerships and sole proprietors). In general, plans maintained by unincorporated employers were subject to special rules in addition to the other qualification requirements of the Code. Most, but not all, of this disparity was eliminated by TEFRA. Under present law, certain special aggregation rules apply to plans maintained by owner-employees that do not apply to other qualified plans (sec. 401(d)(1) and (2)).

HOUSE BILL

The House bill eliminates the special aggregation rules that apply to plans maintained by self-employed individuals that do not apply to other qualified plans.

Effective date.—The provision is effective for years beginning after December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

d. Alternative full funding limitation

PRESENT LAW

Under present law, subject to certain limitations, an employer may make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 150 percent of the plan's current liability, over (2) the lesser of (a) the fair market value of the plan's assets, or (b) the actuarial value of the plan's assets (sec. 412(c)(7)).

The Secretary may, under regulations, adjust the 150-percent figure contained in the full funding limitation to take into account the average age (and length of service, if appropriate) of the participants in the plan (weighted by the value of their benefits under the plan). In addition, the Secretary is authorized to prescribe regulations that apply, in lieu of the 150 percent of current liability limitation, a different full funding limitation based on factors other than current liability. The Secretary may exercise this authority only in a manner so that in the aggregate, the effect on Federal

budget receipts is substantially identical to the effect of the 150-percent full funding limitation.

House Bill

In general

The bill provides that an employer may elect to disregard the 150-percent limitation if each plan in the employer's control group is not top-heavy and the average accrued liability of active participants under the plan for the immediately preceding 5 plan years is at least 80 percent of the plan's total accrued liability (the "alternative full funding limitation"). The Secretary is required to adjust the 150-percent full funding limitation (in the manner specified under the bill) for employers that do not use the alternative full funding limit to ensure that the election by employers to disregard the 150-percent limit does not result in a substantial reduction in Federal revenues for any fiscal year.

Notice requirement

Under the bill, employers electing to apply the alternative limitation generally must notify the Secretary by January 1 of the calendar year preceding the calendar year in which the election period begins. Under a special transition rule, in the case of any election period beginning on or after July 1, 1992, and before January 1, 1994, the notice requirement is deemed satisfied if the Secretary is notified of the election by October 1, 1992. In addition, the Secretary is required, by January 1, 1993, to notify defined benefit plans that have not made an election to apply the alternative limitation of any adjustment to the 150-percent full funding limitation required under the provision.

To the extent a defined benefit plan sponsor makes a contribution to a defined benefit plan with respect to the transition period that exceeds the full-funding limitation, as adjusted by the Secretary for the transition period, the sponsor is required to offset the excess contribution against allowable contributions to the plan in subsequent quarters in the taxable year of the sponsor. If no subsequent contributions may be made for the taxable year, the trustee of the defined benefit plan must return the excess contribution to the sponsor in that taxable year or the subsequent taxable year.

EFFECTIVE DATE.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

In general

The conference agreement follows the House bill and the Senate amendment.

Notice requirement

The conference agreement follows the House bill and the Senate amendment, except that relevant dates under the special

transition rule are changed. Under the conference agreement, in the case of any election period beginning on or after January 1, 1993, and before January 1, 1994, the notice requirement is deemed satisfied if the Secretary is notified of the election by April 1, 1993. In addition, the Secretary is required, by July 1, 1993, to notify defined benefit plans that have not made an election to apply the alternative limitation of any adjustment to the 150-percent full funding limitation required under the provision.

EFFECTIVE DATE.—The provision is effective on January 1, 1993.

e. In-service distributions from rural cooperative plans

PRESENT LAW

Under present law, a qualified cash or deferred arrangement can permit withdrawals by participants only after the earlier of (1) the participant's separation from service, death, or disability, (2) termination of the arrangement, (3) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½, or (4) in the case of a profit-sharing or stock bonus plan to which section 402(a)(8) applies, upon hardship of the participant (sec. 401(k)(2)(B)). In the case of a rural cooperative qualified cash or deferred arrangement, which is part of a money purchase pension plan, withdrawals by participants cannot occur upon attainment of age 59½ or upon hardship.

HOUSE BILL

The House bill provides that a rural cooperative plan that includes a qualified cash or deferred arrangement will not be treated as violating the qualification requirements merely because the plan permits distributions to plan participants after the attainment of age 59½.

EFFECTIVE DATE.—The provision is effective for distributions after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill (age 59½ is changed to 59 under another provision of the Senate amendment).

EFFECTIVE DATE.—The provision is effective as if included in section 1011(k)(5) of the Technical and Miscellaneous Revenue act of 1988.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

f. Special rule for plans covering pilots

PRESENT LAW

Under present law, for purposes of determining whether a qualified pension plan satisfies the minimum coverage requirements, in the case of trust established pursuant to a collective bargaining agreement between airline pilots and one or more employ-

ers, all employees not covered by the collective bargaining agreement are disregarded (sec. 410(b)(3)(B)). This provision applies only in the case of a plan that provides contributions or benefits for employees whose principal duties are customarily performed aboard aircraft in flight. Thus, a collectively bargained plan covering only airline pilots is tested separately for purposes of the minimum coverage requirements.

House Bill

The House bill provides that, in the case of a plan established by one or more employers to provide contributions or benefits for air pilots employed by one or more common carriers engaged in interstate or foreign commerce or air pilots employed by carriers transporting mail for or under contract with the United States government, all employees who are not air pilots are excluded from consideration in testing whether the plan satisfies the minimum coverage requirements. In addition, the bill provides that this exception does not apply in the case of a plan that provides contributions or benefits for employees who are not air pilots or for air pilots whose principal duties are not customarily performed aboard aircraft in flight.

EFFECTIVE DATE.—The provision is effective for years beginning after December 31, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

g. Elimination of special vesting rule for multiemployer plans

Present Law

Under present law, except in the case of multiemployer plans, a plan is not a qualified plan unless a participant's employer-provided benefit vests at least as rapidly as under 1 of 2 alternative minimum vesting schedules. A plan satisfies the first schedule if a participant acquires a nonforfeitable right to 100 percent of the participant's accrued benefit derived from employer contributions upon the participant's completion of 5 years of service. A plan satisfies the second schedule if a participant has a nonforfeitable right to at least 20 percent of the participant's accrued benefit derived from employer contributions after 3 years of service, 40 percent at the end of 4 years of service, 60 percent at the end of 5 years of service, 80 percent at the end of 6 years of service, and 100 percent at the end of 7 years of service.

In the case of multiemployer plan, a participant's accrued benefit derived from employer contributions is required to be 100 percent vested no later than upon the participant's completion of 10 years of service. This special rule applies only to employees covered by the plan pursuant to a collective bargaining agreement.

HOUSE BILL

The House bill conforms the vesting rules for multiemployer plans to the rules applicable to other qualified plans.

Effective date.—The provision is effective for plan years beginning on or after the earlier of (1) the later of January 1, 1993, or the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates, or (2) January 1, 1995, with respect to participants with an hour of service after the effective date.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that the effective date is delayed one year.

h. Treatment of deferred compensation plans of State and local governments and tax-exempt organizations

PRESENT LAW

Constructive receipt

Under a general principle of the Federal income tax system, individuals are taxed currently not only on compensation actually received, but also on compensation constructively received during the taxable year. An individual is treated as having constructively received compensation during the current taxable year if the compensation would have been payable during the current taxable year but for the individual's election to defer receipt of the compensation to a later taxable year.

An exception to this rule applies to compensation deferred under an eligible unfunded deferred compensation plan (a sec. 457 plan) of a tax-exempt or State or local governmental employer.

Under a section 457 plan, an employee who elects to defer the receipt of current compensation will be taxed on the amounts deferred when such amounts are paid or made available. In general, amounts deferred under a section 457 plan may not be made available to an employee before the earlier of (1) the calendar year in which the participant attains age 70-1/2, (2) when the participant is separated from service with the employer, or (3) when the participant is faced with an unforeseeable emergency. Amounts that are made available to an employee upon separation from service are includible in gross income in the taxable year in which they are made available.

Under present law, benefits under a section 457 plan are not treated as made available if the participant may elect to receive a lump sum payable after separation from service and within 60 days of the election. This exception to the general rules is available only if the total amount payable to the participant under the plan does not exceed $3,500 and no additional amounts may be deferred under the plan with respect to the participant.

Coordinated contribution limit

Under present law, the limit on elective deferrals to a qualified cash-or-deferred arrangement (sec. 401(k) plan), simplified employee pension (SEP), or section 501(c)(18) plan is $8,728 (indexed) (sec. 402(g)(1)). The limit on elective deferrals to a tax-sheltered annuity (sec. 403(b) annuity) is the greater of $9,500 or the limit under section 402(g)(1). The limit on contributions to a nonqualified deferred compensation plan of State and local governments and tax-exempt organizations (sec. 457 plan) generally is $7,500.

In addition, section 457 provides a coordinated contribution limit under which qualified elective deferrals are treated as contributions to a section 457 plan for purposes of the section 457 contribution limit, so that the sum of contributions to all such plans is limited to $7,500. Thus, an individual that participates, for example, in both a section 457 plan and a section 401(k) plan may contribute no more than a total of $7,500 to both plans. However, an individual who participates only in a 401(k) plan may contribute up to $8,728 (indexed) to such plan.

HOUSE BILL

The House bill makes three changes to the rules governing unfunded deferred compensation plans (sec. 457 plans) of tax-exempt and governmental employers.

First, the bill permits in-service distributions of accounts that do not exceed $3,500 if no amount has been deferred under the section 457 plan with respect to the account for 2 years and there has been no prior distribution under this cash-out rule.

Second, the bill increases the number of elections that can be made with respect to the time distributions must begin under a section 457 plan. The bill provides that the amount payable to a participant under a section 457 plan is not to be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if (1) the election is made after amounts may be distributed under the plan but before the actual commencement of benefits, and (2) the participant makes only 1 such additional election. This additional election is permitted without the need for financial hardship, and the election can only be to a date that is after the date originally selected by the participant.

Finally, the bill provides for indexing of the dollar limit on deferrals.

Effective date.—The provisions are effective for taxable years beginning after the date of enactment.

SENATE AMENDMENT

The Senate amendment provides that an individual who participates in both a section 457 plan and a section 401(k) plan, SEP, or section 501(c)(18) plan may contribute no more than a total of $8,728 (indexed) to both plans. An individual who participates in both a section 457 plan and a section 403(b) annuity may contribute no more than a total of $9,500 (or, if greater, the limit under sec-

tion 402(g)(1)) to both plans. However, contributions to the section 457 plan still cannot exceed $7,500, as under present law.

Effective date.—The provision applies to years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

i. Limits on contributions and benefits under governmental plans

PRESENT LAW

Present law imposes limits on contributions and benefits under qualified plans based on the type of plan (sec. 415). The limits apply to plans maintained by private and public employers. Certain special rules apply to governmental plans.

In the case of a defined contribution plan, the annual additions to the plan with respect to each plan participant are limited to the lesser of (1) 25 percent of compensation, or (2) $30,000. The limit on the annual benefits payable by a defined benefit pension plan is generally the lesser of (1) 100 percent of compensation, or (2) $112,221 for 1992. The dollar limit is increased annually for inflation. The dollar limit is reduced actuarially if payment of benefits is to begin before the social security retirement age, and increased if benefits are to begin after that age.

Under special rules for plans maintained by State or local governments, such plans may provide benefits greater than those permitted by the limits on benefits applicable to plans maintained by private employers.

HOUSE BILL

The House bill makes the following modifications to the limits on contributions and benefits as applied to governmental plans: (1) compensation includes employer contributions to certain employee plans under a salary reduction arrangement; (2) the 100 percent of compensation limitation does not apply; and (3) the defined benefit pension plan limitation does not apply to certain disability and survivor benefits. The provision also permits State and local government employers to maintain excess benefit plans (i.e., plans that provide benefits that cannot be provided under a qualified plan due to the limits on contributions and benefits) without regard to the limits on unfunded deferred compensation arrangements of State and local government employers (sec. 457). Benefits provided by such plans are subject to the same tax rules applicable to excess plans maintained by private employers (e.g., sec. 83).

Effective date.—The provision is effective for years beginning after the date of enactment. Governmental plans are treated as if in compliance with the requirements of section 415 for years beginning on or before the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

j. Use of 501(c)(21) black lung trust assets to fund retiree health benefits

Present Law

A qualified black lung benefit trust described in section 501(c)(21) of the Internal Revenue Code is exempt from federal income taxation. In addition, a deduction is allowed for contributions to a qualified black lung benefit trust to the extent such contributions are necessary to fund the trust.

Under present law, no assets of a qualified black lung benefit trust may be used for, or diverted to, any purpose other than (i) to satisfy labilities, or pay insurance premiums to cover liabilities, arising under the Black Lung Acts, (ii) to pay administrative costs of operating the trust, or (iii) investment in U.S., State, or local securities and obligations, or in time demand deposits in a bank or insured credit union.

Under present law, excess trust assets may be paid into the national Black Lung Disability Trust Fund, or into the general fund of the U.S. Treasury.

House Bill

The House bill allows excess assets in qualified black lung benefit trusts to be used to pay accident and health benefits or premiums for insurance for such benefits (including administrative and other incidental expenses relating to such benefits) for retired coal miners and their spouses and dependents. The amount of assets available for such purpose is subject to a yearly limit as well as an aggregate limit. The yearly limit is be the amount of assets in excess of 110 percent of the present value of the liability for black lung benefits determined as of the close of the preceding taxable year of the trust. The aggregate limit is the amount of assets in excess of 110 percent of the present value of the liability for black lung benefits determined as of the close of the taxable year of the trust ending prior to the effective date, plus earnings thereon. Each of these determinations is required to be made by an independent actuary.

The amounts used to pay retiree accident or health benefits are not includible in the income of the company, nor is a deduction allowed for such amounts.

Effective date.—The provision is effective for taxable years beginning after December 31, 1991.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement does not include the House bill provision or the Senate amendment. (However, the conference agreement on H.R. 776 includes the provision).

k. Definition of employer reversion

Present Law

Under present law, employer reversions from qualified pension plans are generally subject to an excise tax. In some cases, Federal regulations require that a portion of any reversion from a plan maintained by a government contractor be paid to the United States. Such amounts are subject to the excise tax on reversions.

House Bill

The House bill provides that, for purposes of the excise tax, an employer reversion does not include certain amounts paid to the Federal government by reason of certain government contracting regulations.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

l. Clarification of application of health care continuation rules to savings and loan associations

Present Law

Under the health care continuation (COBRA) rules, persons who are covered under a group health plan are required to be offered the opportunity to continue to participate for a specified period of time in a group health plan of the employer (or a plan of successor employer) despite the occurrence of a qualifying event that otherwise would terminate such participation. Qualified beneficiaries are employees covered by the plan and the spouse and dependent children of a covered employee.

Qualifying events include termination of employment of a covered employee, the divorce or death of a covered employee, the covered employee becoming entitled to Medicare, and, in the case of a retired employee, the commencement of a bankruptcy proceeding under title 11 of the United States Code.

The period for which coverage is required to be continued depends on the qualifying event, and is generally either 18 months or 36 months. Persons electing continuation coverage can be required to pay for the coverage.

The health care continuation provisions are enforced under the Code by means of an excise tax (sec. 4980B).

The Federal Deposit Insurance Corporation Improvement Act of 1991 contained a provision clarifying the application of the health care continuation rules in the case of failed depository institutions. In general, the provision provides that the Federal Deposit Insurance Corporation (FDIC), a bridge bank, or any successor of a failed depository institution is required to provide continuation health care coverage to former employees of the failed institution. This provision is effective for plan years beginning on or after the date of enactment of the Act, regardless of whether the qualifying event occurred before, on, or after such date.

HOUSE BILL

Under the House bill, the obligations of bridge banks and successors to failed institutions are incorporated into the health care continuation provisions of the Code. The provision also provides that retired employees of a failed depository institution are entitled to the same continuation coverage rights as retirees of a company in bankruptcy.

Effective date.—The provision is effective as if included in section 451 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill, except that the conference agreement provides that former employees of a failed depository institution are entitled to the same continuation coverage rights as employees who are terminated. In addition, the conference agreement clarifies that successors to failed institutions are not required to provide continuation health care coverage to former employees of the failed institution if the FDIC or the Resolution Trust Corporation (RTC) elects to relieve the acquirer from such obligation.

Effective date.—Same as the House bill, except that, in addition, the conference agreement clarifies that in the case of the FDIC or any acquirer from the FDIC, the amendments made by this provision apply only to failed depository institutions for which a receiver or conservator is appointed after the date of enactment. Also, the conference agreement clarifies that coverage under the continuation plan maintained by the FDIC on June 25, 1992, and any other substantially similar plan maintained by the FDIC, is deemed to satisfy the obligations of the FDIC (and any acquirer) under the health care continuation provisions of the Code as well as section 451 of the FDIC Improvement Act of 1991 with respect to qualified individuals of failed depository institutions.

m. Elimination of half-year requirements

PRESENT LAW

Under present law, a number of employee plan rules refer to the age of an individual at a certain time. For example, distributions under a qualified pension plan are generally required to begin no later than the April 1 following the year in which an individual attains age 70-1/2 (sec. 401(a)(9)). Similarly, an additional income tax on early withdrawals applies to certain distributions from qualified pension plans and IRAs prior to the time the participant or IRA owner attains age 59-1/2 (sec. 72(t)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment changes the half-year requirements to birthdate requirements. Those rules under present law that refer to age 59-1/2 are changed to refer to age 59, and those that refer to age 70-1/2 are changed to refer to age 70.

Effective date.—The provision applies to years beginning after December 31, 1993.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

n. Penalties for failure to provide reports relating to pension payments

PRESENT LAW

Any person who fails to file an information report with the Internal Revenue Service on or before the prescribed filing date is subject to penalties for each failure. The general penalty structure provides that the amount of the penalty is to vary with the length of time within which the taxpayer corrects the failure, and allows taxpayers to correct a de minimis number of errors and avoid penalties entirely (sec. 6721). A different, flat-amount penalty applies for each failure to provide information reports to the IRS or statements to payees relating to pension payments (sec. 6652(e)).

HOUSE BILL [1]

The House bill incorporates into the general penalty structure the penalties for failure to provide information reports relating to pension payments to the IRS and to recipients. Thus, information reports with respect to pension payments would be treated in a similar fashion to other information reports.

Effective date.—The provision applies to returns and statements the due date for which is after December 31, 1992.

[1] The penalty provision was inadvertently omitted from the House bill.

SENATE AMENDMENT

The Senate amendment is generally the same as the House bill, except that the class of reports to which the Senate amendment applies is slightly different, and no reporting is required with respect to designated distributions of less than $10.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications to conform it to the intent of the House bill. The conference agreement also modifies the penalty for failure to provide the notice required under section 402(f).

o. Contributions on behalf of disabled employees

PRESENT LAW

Under present law, an employer may elect to continue deductible contributions to a defined contribution plan on behalf of an employee who is permanently and totally disabled. For purposes of the limit on annual additions (sec. 415(c)), the compensation of a disabled employee is deemed to be equal to the annualized compensation of the employee prior to the employee's becoming disabled. Contributions are not permitted on behalf of disabled employees who were officers, owners, or highly compensated before they became disabled.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the special rule for contributions on behalf of disabled employees is applicable without an employer election and to highly compensated employees if the defined contribution plan provides for the continuation of contributions on behalf of all participants who are permanently and totally disabled.

Effective date.—The provision applies to years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

p. Affiliation requirements for employers jointly maintaining a VEBA

PRESENT LAW

A voluntary employees' beneficiary association (VEBA) that satisfies certain requirements is entitled to tax-exempt status. The Code generally describes a VEBA as an association that provides for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of the association inures (other

than through such payments) to the benefit of nay private shareholder or individual. The requirements a VEBA must comply with in order to be tax exempt are further specified in regulations.

Under Treasury regulations, membership in a VEBA is required to be limited to individuals whose eligibility is determined by reference to objective standards that constitute an employment-related common bond. Such a common bond exists if eligibility is determined by the following standards: (1) employment by a common employer (or affiliated employers); (2) coverage under one or more collective bargaining agreements; (3) membership in a labor union (or in one or more locals of a national or international labor union); or (4) employment by one or more employers in the same line of business in the same geographic locale.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that otherwise unrelated employers are treated as affiliated and, therefore, can maintain a tax-exempt VEBA if the employers (1) are in the same line of business, (2) act jointly to perform tasks which are integral to the activities of each of the employers, (3) act jointly to such an extent that the joint maintenance of a VEBA is not a major part of the joint activities, and (4) a substantial number of the employers are tax exempt.

Under the bill, employers are considered affiliated, for example, under the following circumstances. The employers participating in the VEBA are in the same line of business and belong to an association that provides to its members a significant amount of each of the following services: (1) research and development relating to the members' primary activity; (2) education and training of members' employees; and (3) public relations. In addition, the employers are sufficiently similar (e.g., subject to similar regulatory requirements) that the association's services provide material assistance to all of the employers. The employers also demonstrate the importance of their joint activities by having meetings at least annually attended by substantially all of the employers. Finally, the employers maintain a common retirement plan.

On the other hand, it is not intended that the mere existence of a trade association is a sufficient basis for the member-employers to be considered affiliated, even if they are in the same line of business. It is also not sufficient if the trade association publishes a newsletter and provides significant public relations services, but only provides nominal amounts, if any, of other services integral to the employers' primary activity.

A group of employers are also not considered affiliated under the bill by virtue of the membership of their employees in a professional association.

Effective date.—The provision applies to years beginning before, on, or after the date of enactment. The provision is intended as a clarification of present law. However, it is not intended to create any inference as to whether any part of the Treasury regu-

lations affecting VEBAs, other than the affiliated employer rule, is or is not present law.

CONFERENCE AGREEMENT

Under the conference agreement, employers are considered affiliated for purposes of the VEBA rules if substantially all such employers are section 501(c)(12) organizations of the same type.

For purposes of this provision, the term "section 501(c)(12) organization" means (1) any organization described in section 501(c)(12); (2) any organization providing a service that is the same type of service that is or could be provided by an organization described in clause (1); (3) any organization described in section 501(c)(4) or (6), provided that at least 80 percent of the members of the organization are section 501(c)(12) organizations described in clauses (1) or (2); and (4) any organization which is a national association of organizations described in clauses (1), (2), or (3).

An organization described in clause (2), but not in clause (1), will not be treated as a section 501(c)(12) organization with respect to a VEBA unless a substantial number of employers maintaining such VEBA are described in clause (1). Similarly, an organization described in clause (2) but not in clause (1) will not be considered to provide a service that is the same type of service as a service provided by an organization described in clause (1) unless that type of service is a primary function of the organization described in clause (1). Under clause (2), a service will not be considered one that could be provided unless there is a substantial likelihood that that same type of service would or could be provided by a section 501(c)(12) organization. Services are considered to be of the same type if they are the same or directly related to each other. For example, the generation of electricity is directly related to the provision of electricity to consumers.

Effective date.—Years beginning after December 31, 1992. The provision is not intended to create any inference as to present law.

q. Disaggregation of union plans

PRESENT LAW

Under present law, employees covered by a collective bargaining agreement are excluded from consideration in testing whether a qualified plan satisfies the minimum coverage and nondiscrimination tests. In addition, such employees are not counted for purposes of determining whether a line of business has at least 50 employees, the threshold number for designating a unit as a separate line of business for purposes of applying the coverage and nondiscrimination tests.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that an employer can elect to include union employees who benefit under the plan on the same

terms as other employees in testing whether a plan satisfies the minimum coverage and nondiscrimination tests, and in applying the 50-employee test under the line of business rules.

Effective date.—The provision applies to years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

r. Uniform retirement age

PRESENT LAW

A qualified plan generally must provide that payment of benefits under the plan must begin no later than 60 days after the end of the plan year in which the participant reaches age 65. Also, for purpose of the vesting and benefit accrual rules, normal retirement age generally can be no later than age 65. For purposes of applying the limits on contributions and benefits (sec. 415), social security retirement age is generally used as retirement age. The social security retirement age as used for such purposes is presently age 65, but is scheduled to gradually increase.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that for purposes of the general nondiscrimination rule (sec. 401(a)(4)) the social security retirement age (as defined in sec. 415) is a uniform retirement age and that subsidized early retirement benefits and joint and survivor annuities based on an employee's social security retirement age (as defined in sec. 415) are treated as being available to employees on the same terms.

Effective date.—The provision is effective for years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the clarification that subsidized early retirement benefits and joint and survivor annuities are not treated as not being available to employees on the same terms merely because they are based on an employee's social security retirement age.

s. National commission on private pension plans

PRESENT LAW

None.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision establishes a National commission on private pension plans to study national retirement income policy. The commission is directed to submit a report to the Congress by Labor Day 1994, the 20th anniversary of the enactment of the Employee Retirement Income Security Act of 1974, setting forth its findings and recommendations for increasing the level and security of private retirement savings.

The provision authorizes appropriations through fiscal year 1994 for such sums as may be necessary to carry out the provision.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

t. Full funding limitation of multiemployer plans

PRESENT LAW

Under the Internal Revenue Code, subject to certain limitations, an employer may make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 150 percent of the plan's current liability, over (2) the lesser of (a) the fair market value of the plan's assets, or (b) the actuarial value of the plan's assets (sec. 412(c)(7)).

Plans subject to the minimum funding rules are required to make an actuarial valuation of the plan not less frequently than annually.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the 150 percent of current liability limitation does not apply to multiemployer plans. In addition, the bill repeals the Internal Revenue Code annual valuation requirement for multiemployer plans and applies the prior-law rule that valuations generally be performed at least every 3 years.

Effective date.—The provision applies to years beginning after December 31, 1991.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the effective date is delayed one year.

u. Church pension plans

PRESENT LAW

Plans maintained by churches and certain church-controlled organizations are exempt from certain of the qualification require-

ments applicable to pension plans under the Code pursuant to the Employee Retirement Income Security Act of 1974 (as amended) (ERISA). For example, such plans are not subject to ERISA's vesting, coverage, and funding requirements. Church plans may elect to waive the exemption from the qualification rules.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that church plans that are subject to pre-ERISA vesting rules under present law are subject to ERISA's vesting rules in effect immediately before the enactment of the Tax Reform Act of 1986. Thus, benefits under such plans are required to vest at least as rapidly as under a 10-year cliff vesting schedule, or under a schedule that provides ratable vesting between 5 and 15 years of service.

In the case of a church plan maintained by more than one employer, if one or more organizations maintaining a church plan fails to satisfy the qualification requirements, the plan is not disqualified with respect to the other organizations maintaining the plan that meet such requirements.

The Senate amendment modifies the definition of highly compensated employee applicable to church plans by providing that a person is not considered an officer, shareholder, or person whose principal duties consist of supervising the work of other employees if the employee receives less than $50,000 of compensation (indexed). In addition, certain employees covered by a collective bargaining agreement (sec. 410(b)(3)(A)) would be excluded.

Tax-sheltered annuity contracts (sec. 403(b)) are permitted to make distributions on account of hardship. The Senate amendment modifies the definition of hardship so that it is the same as that used for purposes of the rule relating to cash or deferred arrangements (sec. 401(k)(2)).

The Senate amendment permits self-employed ministers to participate in the denominational church plan. Such ministers are disregarded in applying applicable nondiscrimination rules.

The Senate amendment provides that church plans do not have to maintain separate accounts under a section 401(h) account for employees who are key employees merely because they are officers with annual compensation greater than a certain amount. Any benefits provided under the account, however, must be taken into account for purposes of the limits on contributions and benefits as under present law.

The Senate amendment modifies the elective catch-up provision relating to section 403(b) annuities and retirement income accounts maintained by churches by repealing the limitation on the amount of such catch-up contributions based on years of service (sec. 402(g)(8)(A)(iii)).

The Senate amendment modifies the minimum distribution rules (sec. 401(a)(9)) to permit church plans to pay a benefit at year-end (the so-called "13th check") or to provide an annuity which increases slightly each year.

The Senate amendment expands the present-law exception to the age 70½ rule for church plans so that it applies to church plans as defined in section 414(e).

Effective date.—The vesting amendment is effective for years beginning after December 31, 1993. The amendment relating to plans maintained by more than one employer, the definition of highly compensated employee, self-employed ministers, and the forms of benefits under the minimum distribution rules are effective for years beginning on, after, or before December 31, 1991. The amendment relating to the definition of disability is effective for years beginning after December 31, 1988. The amendment relating to section 401(h) accounts is effective for years beginning after March 31, 1984. The amendment relating to catch-up contributions and the age 70½ rule is effective as if included in the provision of the Tax Reform Act of 1986 to which such amendment relates.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

v. Date for adoption of plan amendments

PRESENT LAW

Under regulations, plan amendments to reflect changes in the generally must be made within the remedial amendment period. Such period generally ends at the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs. The plan must be operated in accordance with the law at all times, and any plan amendment must apply retroactively to the period following the effective date of the change which it reflects.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that any plan amendments required by the bill are not required to be made before the first day of the first plan year beginning on or after January 1, 1994, if the plan is operated in accordance with the applicable provision and the amendment is retroactive to the effective date of the applicable provision.

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

C. Partnership Provisions

1. General partnership provisions

a. Simplified flow-through for large partnerships

Present Law

A partnership generally is treated as a conduit for Federal income tax purposes. Each partner takes into account separately his distributive share of the partnership's items of income, gain, loss, deduction or credit. The character of an item is the same as if it had been directly realized or incurred by the partner. Limitations affecting the computation of taxable income generally apply at the partner level.

House Bill

Under the House bill, the tax treatment of a large partnership (generally, a partnership with at least 250 partners, or an electing partnership with at least 100 partners) and its partners is modified. The bill provides that each partner takes into account separately the partner's distributive share of the following items, which are determined at the partnership level: (1) taxable income or loss from passive loss limitation activities; (2) taxable income or loss from other activities (e.g., portfolio income or loss); (3) net capital gain or loss to the extent allocable to passive loss limitation activities and other activities; (4) tax-exempt interest; (5) net alternative minimum tax adjustment separately computed for passive loss limitation activities and other activities; (6) general credits; (7) low-income housing credit; (8) rehabilitation credit; (9) credit for producing fuel from a nonconventional source; and (10) creditable foreign taxes and foreign source items.

All limitations and other provisions affecting the computation of taxable income or any credit generally are applied at the partnership (and not the partner) level. In addition, all elections affecting the computation of taxable income or any credit generally are made by the partnership.

The simplified reporting regime does not apply to service or commodity partnerships. In addition, special rules apply to large partnerships holding oil and gas properties.

For all partners contributing property to a large partnership, the bill replaces section 704(c) with a "deferred sale" approach. Under the bill, a large partnership takes a fair market value basis in the property, and the contributing partner's precontribution gain or loss is deferred until the occurrence of specified recognition events.

Effective date.—Partnership taxable years ending on or after December 31, 1992.

Senate Amendment

The Senate amendment is the same as the House bill, except for the following: (1) new section 737 of the Code, relating to the recognition of precontribution gain in the case of certain distributions to a contributing partner (sec. 3004 of the House bill and sec.

3013 of the Senate amendment) does not apply if the deferred sale rules apply; (2) under the deferred sale rules, if contributed property that is distributed to the contributing partner consists of an interest in an entity, such interest is taken into account (in determining whether precontribution gain or loss is triggered) to the extent that its value is attributable to property contributed to the entity after such interest was contributed to the partnership; and (3) the provisions generally apply to partnership taxable years ending on or after December 31, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

b. Simplified audit procedures for large partnerships

PRESENT LAW

In general

Prior to 1982, regardless of the size of a partnership, adjustments to a partnership's items of income, gain, loss, deduction, or credit had to be made in separate proceedings with respect to each partner individually. Because a large partnership sometimes had many partners located in different audit districts, adjustments to items of income, gains, losses, deductions, or credits of the partnership had to be made in numerous actions in several jurisdictions, sometimes with conflicting outcomes.

The Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") established unified audit rules applicable to all but certain small (10 or fewer partners) partnerships. These rules require the tax treatment of all "partnership items" to be determined at the partnership, rather than the partner, level. Partnership items are those items that are more appropriately determined at the partnership level than at the partner level, as provided by regulations.

Administrative proceedings

Under the TEFRA rules, a partner must report all partnership items consistently with the partnership return or must notify the IRS of any inconsistency. If a partner fails to report any partnership item consistently with the partnership return, the IRS may make a computational adjustment and immediately assess any additional tax that results.

The IRS may challenge the reporting position of a partnership by conducting a single administrative proceeding to resolve the issue with respect to all partners. But the IRS must still assess any resulting deficiency against each of the taxpayers who were partners in the year in which the understatement of tax liability arose.

Any partner of a partnership can request an administrative adjustment or a refund for his own separate tax liability. Any partner also has the right to participate in partnership-level administrative proceedings. A settlement agreement with respect to partnership items binds all parties to the settlement.

Tax Matters Partner

The TEFRA rules establish the "Tax Matters Partner" as the primary representative of a partnership in dealings with the IRS. The Tax Matters Partner is a general partner designated by the partnership or, in the absence of designation, the general partner with the largest profits interest at the close of the taxable year. If no Tax Matters Partner is designated, and it is impractical to apply the largest profits interest rule, the IRS may select any partner as the Tax Matters Partner.

Notice requirements

The IRS generally is required to give notice of the beginning of partnership-level administrative proceedings and any resulting administrative adjustment to all partners whose names and addresses are furnished to the IRS. For partnerships with more than 100 partners, however, the IRS generally is not required to give notice to any partner whose profits interest is less than one percent.

Adjudication of disputes concerning partnership items

After the IRS makes an administrative adjustment, the Tax Matters Partner (and, in limited circumstances, certain other partners) may file a petition for readjustment of partnership items in the Tax Court, the district court in which the partnership's principal place of business is located, or the Claims Court.

Statute of limitations

The IRS generally cannot adjust a partnership item for a partnership taxable year if more than 3 years have elapsed since the later of the filing of the partnership return or the last day for the filing of the partnership return.

HOUSE BILL

In general

The House bill creates a new audit system for large partnerships. The bill defines "large partnership" the same way for audit and reporting purposes (generally partnerships with at least 250 partners) except that certain oil and gas partnerships exempted from the large partnership reporting requirements are large partnerships for the audit rules.

As under present law, large partnerships and their partners are subject to unified audit rules. The tax treatment of "partnership items" are determined at the partnership, rather than the partner, level. The term "partnership items" is defined as under present law.

Unlike present law, however, partnership adjustments generally will flow through to the partners for the year in which the adjustment takes effect. Thus, the current-year partners' share of current-year partnership items of income, gains, losses, deductions, or credits will be adjusted to reflect partnership adjustments that take effect in that year. The adjustments generally will not affect prior-year returns of any partners (except in the case of changes to any partner's distributive shares).

In lieu of flowing an adjustment through to its partners, the partnership may elect to pay an imputed underpayment. The imputed underpayment generally is calculated by netting the adjustments to the income and loss items of the partnership and multiplying that amount by the highest tax rate (whether individual or corporate). A partner may not file a claim for credit or refund of his allocable share of the payment.

Regardless of whether a partnership adjustment flows through to the partners, an adjustment must be offset if it requires another adjustment in a year after the adjusted year and before the year the offsetted adjustment takes effect. For example, if a partnership expensed a $1,000 item in year 1, and it was determined in year 4 that the item should have been capitalized and amortized ratably over 10 years, the adjustment in year 4 would be $700, apart from any interest or penalty. (The $900 adjustment for the improper deduction would be offset by $200 of adjustments for amortization deductions.) The year 4 partners would be required to include an additional $700 in income for that year. The partnership may ratably amortize the remaining $700 of expenses in years 4–10.

In addition, the partnership, rather than the partners individually, generally is liable for any interest and penalties that result from a partnership adjustment. Interest is computed for the period beginning on the return due date for the adjusted year and ending on the earlier of the return due date for the partnership taxable year in which the adjustment takes effect or the date the partnership pays the imputed underpayment. Thus, in the above example, the partnership would be liable for 4 years' worth of interest (on a declining principal amount).

Penalties (such as the accuracy and fraud penalties) are determined on a year-by-year basis (without offsets) based on an imputed underpayment. All accuracy penalty criteria and waiver criteria (such as reasonable cause, substantial authority, etc.) are determined as if the partnership were a taxable individual. Accuracy and fraud penalties are assessed and accrue interest in the same manner as if asserted against a taxable individual.

Any payment (for Federal income taxes, interest, or penalties) that a large partnership is required to make is non-deductible.

If a partnership ceases to exist before a partnership adjustment takes effect, the former partners are required to take the adjustment into account, as provided by regulations. Regulations are also authorized to prevent abuse and to enforce efficiently the audit rules in circumstances that present special enforcement considerations (such as partnership bankruptcy).

Administrative proceedings

Under the large partnership audit rules, a partner is not permitted to report any partnership items inconsistently with the partnership return, even if the partner notifies the IRS of the inconsistency. The IRS could treat a partnership item that was reported inconsistently by a partner as a mathematical or clerical error and immediately assess any additional tax against that partner.

As under present law, the IRS could challenge the reporting position of a partnership by conducting a single administrative pro-

ceeding to resolve the issue with respect to all partners. Unlike under present law, however, partners will have no right individually to participate in settlement conferences or to request a refund.

Partnership representative

The bill requires each large partnership to designate a partner or other person to act on its behalf. If a large partnership fails to designate such a person, the IRS is permitted to designate any one of the partners as the person authorized to act on the partnership's behalf. After the IRS's designation, a large partnership could still designate a replacement for the IRS-designated partner.

Notice requirements

Unlike under present law, the IRS is not required to give notice to individual partners of the commencement of an administrative proceeding or of a final adjustment. Instead, the IRS is authorized to send notice of a partnership adjustment to the partnership itself by certified or registered mail. The IRS could give proper notice by mailing the notice to the last known address of the partnership, even if the partnership had terminated its existence.

Adjudication of disputes concerning partnership items

As under present law, an administrative adjustment could be challenged in the Tax Court, the district court in which the partnership's principal place of business is located, or the Claims Court. However, only the partnership, and not partners individually, can petition for a readjustment of partnership items.

If a petition for readjustment of partnership items is filed by the partnership, the court with which the petition is filed will have jurisdiction to determine the tax treatment of all partnership items of the partnership for the partnership taxable year to which the notice of partnership adjustment relates, and the proper allocation of such items among the partners. Thus, the court's jurisdiction is not limited to the items adjusted in the notice.

Statute of limitations

Absent an agreement to extend the statute of limitations, the IRS generally could not adjust a partnership item of a large partnership more than 3 years after the later of the filing of the partnership return or the last day for the filing of the partnership return. Special rules apply to false or fraudulent returns, a substantial omission of income, or the failure to file a return. The IRS would assess and collect any deficiency of a partner that arises from any adjustment to a partnership item subject to the limitations period on assessments and collection applicable to the year the adjustment takes effect (secs. 6248, 6501 and 6502).

Regulatory authority

The Secretary of the Treasury is granted authority to prescribe regulations as may be necessary to carry out the simplified audit procedure provisions, including regulations to prevent abuse of the provisions through manipulation. The regulations may include rules that address transfers of partnership interests, in anticipation of a partnership adjustment, to persons who are tax-favored

(e.g., corporations with net operating losses, tax-exempt organizations, and foreign partners) or persons who are expected to be unable to pay tax (e.g., shell corporations). For example, if prior to the time a partnership adjustment takes effect, a taxable partner transfers a partnership interest to a nonresident alien to avoid the tax effect of the partnership adjustment, the rules may provide, among other things, that income related to the partnership adjustment is treated as effectively connected taxable income, that the partnership adjustment is treated as taking effect before the partnership interest was transferred, or that the former partner is treated as a current partner to whom the partnership adjustment is allocated.

Effective date

The provision applies to partnership taxable years ending on or after December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the effective date is for partnership taxable years ending on or after December 31, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

c. Advance due date for furnishing information to partners of large partnerships

PRESENT LAW

A partnership required to file an income tax return with the IRS must also furnish an information return to each of its partners on or before the day on which the income tax return for the year is required to be filed, including extensions. Under regulations, a partnership must file its income tax return on or before the fifteenth day of the fourth month following the end of the partnership's taxable year (on or before April 15, for calendar year partnerships). This is the same deadline by which most individual partners file their tax returns.

HOUSE BILL

The House bill provides that a large partnership must furnish information returns to partners by the first March 15 following the close of the partnership's taxable year.

The bill also provides that, if the partnership is required to provide copies of the information returns to the IRS on magnetic media, each schedule (such as each Schedule K-1) with respect to each partner is treated as a separate information return with respect to the corrective periods and penalties that are generally applicable to all information returns.

Effective date.—Partnership taxable years ending on or after December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the provision is effective for partnership taxable years ending on or after December 31, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

d. Partnership returns on magnetic media

PRESENT LAW

Partnerships are permitted, but not required, to provide the tax return of the partnership (Form 1065), as well as copies of the schedules sent to each partner (Form K-1), to the IRS on magnetic media.

HOUSE BILL

The House bill authorizes the IRS to require large partnerships and other partnerships with 250 or more partners to provide the tax return of the partnership (Form 1065), as well as copies of the schedules sent to each partner (Form K-1), to the IRS on magnetic media.

Effective date.—For partnerships that are large partnerships (as defined in the simplified reporting provision), the provision is effective for partnership taxable years ending on or after December 31, 1992. For partnerships that are not large partnerships (as defined) but that have 250 or more partners, the provision is effective for partnership taxable years ending on or after December 31, 1998.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the provision as applied to large partnerships (as defined) is effective for partnership taxable years ending on or after December 31, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. IRA filing requirements for income from certain unrelated trades and businesses

PRESENT LAW

Return filing requirements

An individual retirement account ("IRA") is a trust which generally is exempt from taxation except for the taxes imposed on income from an unrelated trade or business (sec. 408(e)(1)). Under regulations, a fiduciary of a trust that is exempt from taxation (but subject to the taxes imposed on income from an unrelated trade or business) generally is required to file a return on behalf of the trust for a taxable year if the trust has gross income of $1,000 or

more included in computing unrelated business taxable income for that year (Treas. Reg. sec. 1.6012-3(a)(5)).

Unrelated business taxable income is the gross income (including gross income from a partnership) derived by an exempt organization from an unrelated trade or business, less certain deductions which are directly connected with the carrying on of such trade or business (sec. 512(a)(1)). In calculating unrelated business taxable income, exempt organizations (including IRAs) generally also are permitted a specific deduction of $1,000 (sec. 512(b)(12)).

For purposes of determining whether income is from an unrelated trade or business, the character of a partner's distributive share of partnership income generally is the same as if the income had been directly realized by the partner (sec. 512(c)).

Unified audits of partnerships

All but certain small partnerships are subject to unified audit rules established by the Tax Equity and Fiscal Responsibility Act of 1982. These rules require the tax treatment of all "partnership items" to be determined at the partnership, rather than the partner, level. Partnership items are those items that are more appropriately determined at the partnership level than at the partner level, including such items as gross income and deductions of the partnership.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement modifies the filing threshold for an IRA with an interest in a partnership that is subject to the partnership-level audit rules. A fiduciary of such an IRA may treat the trust's share of partnership taxable income as gross income, for purposes of determining whether the trust meets the $1,000 gross income filing threshold. Thus, under the provision, a fiduciary of an IRA that receives taxable income from a partnership that is subject to partnership-level audit rules and gross income from any other unrelated trade or business will be required to file an income tax return where the sum of such taxable and gross income is $1,000 or more. A fiduciary of an IRA that receives taxable income from a partnership that is subject to partnership-level audit rules of less than $1,000 (before the $1,000 specific deduction) will not be required to file an income tax return if the IRA does not have any other income from an unrelated trade or business.

Effective date.—Taxable years ending on or after October 1, 1992.

3. Partnership proceedings under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)

a. Clarify the treatment of partnership items in deficiency proceedings

PRESENT LAW

TEFRA partnership proceedings must be kept separate from deficiency proceedings involving the partners in their individual capacities. Prior to the Tax Court's opinion in *Munro* v. *Commissioner*, 92 T.C. 71 (1989), the IRS computed deficiencies by assuming that all items that were subject to the TEFRA partnership procedures were correctly reported on the taxpayer's return. However, where the losses claimed from TEFRA partnerships were so large that they offset any proposed adjustments to nonpartnership items, no deficiency could arise from a non-TEFRA proceeding, and if the partnership losses were subsequently disallowed in a partnership proceeding, the non-TEFRA adjustments might be uncollectible because of the expiration of the statute of limitations with respect to nonpartnership items.

Faced with this situation in *Munro*, the IRS issued a notice of deficiency to the taxpayer that presumptively disallowed the taxpayer's TEFRA partnership losses for computational purposes only. Although the Tax Court ruled that a deficiency existed and that the court had jurisdiction to hear the case, the court disapproved of the methodology used by the IRS to compute the deficiency. Specifically, the court held that partnership items (whether income, loss, deduction, or credit) included on a taxpayer's return must be completely ignored in determining whether a deficiency exists that is attributable to nonpartnership items.

HOUSE BILL

The House bill overrules *Munro* and allows the IRS to return to its prior practice of computing deficiencies by assuming that all TEFRA items whose treatment has not been finally determined had been correctly reported on the taxpayer's return. This will eliminate the need to do special computations that involve the removal of TEFRA items from a taxpayer's return, and will restore to taxpayers a prepayment forum with respect to the TEFRA items. In addition, the bill provides a special rule to address the factual situation presented in *Munro*.

Specifically, the bill provides a declaratory judgment procedure in the Tax Court for adjustments to an oversheltered return. An oversheltered return is a return that shows no taxable income and a net loss from TEFRA partnerships. In such a case, the IRS is authorized to issue a notice of adjustment with respect to non-TEFRA items, notwithstanding that no deficiency would result from the adjustment. However, the IRS may only issue such a notice if a deficiency would have arisen in the absence of the net loss from TEFRA partnerships.

The Tax Court would be granted jurisdiction to determine the correctness of such an adjustment as well as to make a declaration with respect to any other item for the taxable year to which the

notice of adjustment relates, except for partnership items and affected items which require partner-level determinations. No tax would be due upon such a determination, but a decision of the Tax Court would be treated as a final decision, permitting an appeal of the decision by either the taxpayer or the IRS. An adjustment determined to be correct would thus have the effect of increasing the taxable income that would be deemed to have been reported on the taxpayer's return. If the taxpayer's partnership items were then adjusted in a subsequent proceeding, the IRS would have preserved its ability to collect tax on any increased deficiency attributable to the nonpartnership items.

Alternatively, if the taxpayer chooses not to contest the notice of adjustment within the 90-day period, the bill provides that when the taxpayer's partnership items are finally determined, the taxpayer has the right to file a refund claim for tax attributable to the items adjusted by the earlier notice of adjustment for the taxable year. Although a refund claim is not generally permitted with respect to a deficiency arising from a TEFRA proceeding, such a rule is appropriate with respect to a defaulted notice of adjustment because taxpayers may not challenge such a notice when issued since it does not require the payment of additional tax.

In addition, the bill incorporates a number of provisions intended to clarify the coordination between TEFRA audit proceedings and individual deficiency proceedings. Under these provisions, any adjustment with respect to a non-partnership item that caused an increase in tax liability with respect to a partnership item would be treated as a computational adjustment and assessed after the conclusion of the TEFRA proceeding. Accordingly, deficiency procedures would not apply with respect to this increase in tax liability, and the statute of limitations applicable to TEFRA proceedings would be controlling.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

b. Permit the IRS to rely on partnership returns to determine the proper audit procedures

PRESENT LAW

TEFRA established unified audit rules applicable to all partnerships, except for partnerships with 10 or fewer partners, each of whom is a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item is the same as that partner's share of every other partnership item. Partners in the exempted partnerships are subject to regular deficiency procedures.

HOUSE BILL

The House bill permits the IRS to apply the TEFRA audit procedures if, based on the partnership's return for the year, the IRS reasonably determines that those procedures should apply. Similarly, the bill permits the IRS to apply the normal deficiency procedures if, based on the partnership's return for the year, the IRS reasonably determines that those procedures should apply.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

c. Statute of limitations suspensions

i. Suspend statute when an untimely petition is filed

PRESENT LAW

In a deficiency case, section 6503(a) provides that if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, the period of limitations on assessment and collection is suspended until the decision of the Tax Court becomes final, and for 60 days thereafter. The counterpart to this provision with respect to TEFRA cases is contained in section 6229(d). That section provides that the period of limitations is suspended for the period during which an action may be brought under section 6226 and, if an action is brought during such period, until the decision of the court becomes final, and for 1 year thereafter. As a result of this difference in language, the running of the statute of limitations in a TEFRA case will only be tolled by the filing of a timely petition whereas in a deficiency case, the statute of limitations is tolled by the filing of any petition, regardless of whether the petition is timely.

HOUSE BILL

The House bill conforms the suspension rule for the filing of petitions in TEFRA cases with the rule under section 6503(a) pertaining to deficiency cases. Under the provision, the statute of limitations in TEFRA cases would be suspended by the filing of any petition under section 6226, regardless of whether the petition is timely or valid, and the suspension will remain in effect until the decision of the court becomes final, and for one year thereafter. Hence, if the statute of limitations is open at the time that an untimely petition is filed, the limitations period will no longer continue to run and possibly expire while the action is pending before the court.

Effective date.—The provision is effective with respect to all cases in which the period of limitations has not expired under present law as of the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

ii. Suspend statute of limitations during bankruptcy proceedings

PRESENT LAW

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is 1 year after the date that the items become nonpartnership items. Section 6503(h) provides for the suspension of the limitations period during the pendency of a bankruptcy proceeding. However, this provision only applies to the limitations periods provided in sections 6501 and 6502.

Under present law, because the suspension provision in section 6503(h) applies only to the limitations periods provided in section 6501 and 6502, some uncertainty exists as to whether section 6503(h) applies to suspend the limitations period pertaining to converted items provided in section 6229(f) when a petition naming a partner as a debtor in a bankruptcy proceeding is filed. As a result, the limitations period provided in section 6229(f) may continue to run during the pendency of the bankruptcy proceeding, notwithstanding that the IRS is prohibited from making an assessment against the debtor because of the automatic stay provisions of the Bankruptcy Code.

HOUSE BILL

The House bill clarifies that the statute of limitations is suspended for a partner who is named in a bankruptcy petition. The suspension period is for the entire period during which the IRS is prohibited by reason of the bankruptcy proceeding from making an assessment, and for 60 days thereafter. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective date.—The provision is effective with respect to all cases in which the period of limitations has not expired under present law as of the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

iii. Extend statute of limitations for bankrupt TMPs

PRESENT LAW

Section 6229(b)(1)(B) provides that the statute of limitations is extended with respect to all partners in the partnership by an agreement entered into between the tax matters partner (TMP) and the IRS. However, Temp. Treas. Reg. secs. 301.6231(a)(7)-1T(1)(4) and 301.6231(c)-7T(a) provide that upon the filing of a petition naming a partner as a debtor in a bankruptcy proceeding, that partner's partnership items convert to nonpartnership items, and if the debtor was the tax matters partner, such status terminates. These rules are necessary because of the automatic stay provision contained in 11 U.S.C. sec. 362(a)(8). As a result, if a consent to extend the statute of limitations is signed by a person who would be the TMP but for the fact that at the time that the agreement is executed the person was a debtor in a bankruptcy proceeding, the consent would not be binding on the other partners because the person signing the agreement was no longer the TMP at the time that the agreement was executed.

HOUSE BILL

The House bill provides that unless the IRS is notified of a bankruptcy proceeding in accordance with regulations, the IRS can rely on a statute extension signed by a person who would be the tax matters partner but for the fact that said person was in bankruptcy at the time that the person signed the agreement. Statute extensions granted by a bankrupt TMP in these cases will be binding on all of the partners in the partnership. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective date.—The provision is effective for extension agreements entered into after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

d. Expand small partnership exception from TEFRA

PRESENT LAW

TEFRA established unified audit rules applicable to all partnerships, except for partnerships with 10 or fewer partners, each of whom is a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item is the same as that partner's share of every other partnership item.

Partners in the exempted partnerships are subject to regular deficiency procedures.

HOUSE BILL

The House bill permits a small partnership to have a C corporation as a partner or to specially allocate items without jeopardizing its exception from the TEFRA rules. However, the bill retains the prohibition of present law against having a flow-through entity (other than an estate of a deceased partner) as a partner for purposes of qualifying for the small partnership exception.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

e. Exclude partial settlements from 1-year assessment rule

PRESENT LAW

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is 1 year after the date that the items become nonpartnership items. Section 6231(b)(1)(C) provides that the partnership items of a partner for a partnership taxable year become nonpartnership items as of the date the partner enters into a settlement agreement with the IRS with respect to such items.

HOUSE BILL

The House bill provides that if a partner and the IRS enter into a settlement agreement with respect to some but not all of the partnership items in dispute for a partnership taxable year and other partnership items remain in dispute, the period for assessing any tax attributable to the settled items would be determined as if such agreement had not been entered into. Consequently, the limitations period that is applicable to the last item to be resolved for the partnership taxable year shall be controlling with respect to all disputed partnership items for the partnership taxable year. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except that the effective date is for settlements entered into after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

f. Extend time for filing a request for administrative adjustment where an agreement to extend the statute of limitations is entered

Present Law

If an agreement extending the statute is entered into with respect to a non-TEFRA statute of limitations, that agreement also extends the statute of limitations for filing refund claims (sec. 6511(c)). There is no comparable provision for extending the time for filing refund claims with respect to partnership items subject to the TEFRA partnership rules.

House Bill

The House bill provides that if a TEFRA statute extension agreement is entered into, that agreement also extends the statute of limitations for filing refund claims attributable to partnership items or affected items until 6 months after the expiration of the limitations period for assessments.

Effective date.—The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

g. Provide innocent spouse relief for TEFRA proceedings

Present Law

In general, an innocent spouse may be relieved of liability for tax, penalties and interest if certain conditions are met (sec. 6013(e)). However, existing law does not provide the spouse of a partner in a TEFRA partnership with a judicial forum to raise the innocent spouse defense with respect to any tax or interest that relates to an investment in a TEFRA partnership.

House Bill

The House bill provides both a prepayment forum and a refund forum for raising the innocent spouse defense in TEFRA cases.

With respect to a prepayment forum, the bill provides that within 60 days of the date that a notice and demand for payment (or notice of computational adjustment) relating to partnership items is mailed to the spouse of a partner, the spouse may request that the assessment be abated. Upon receipt of such a request, the assessment will be abated and any reassessment will be subject to the deficiency procedures. If an abatement is requested, the statute of limitations will not expire before the date which is 60 days after the date of the abatement. If the spouse files a petition with the Tax Court, the Tax Court will only have jurisdiction to determine whether the requirements of section 6013(e) have been satisfied. In making this determination, the treatment of the partnership items that gave rise to the liability in question will be conclusive.

Alternatively, the bill provides that the spouse of a partner may file a claim for refund to raise the innocent spouse defense. The claim must be filed within 6 months from the date that the notice and demand (or notice of computational adjustment) is mailed to the spouse. If the claim is not allowed the spouse may file a refund action. For purposes of any claim or suit under this provision, the treatment of the partnership items that gave rise to the liability in question will be conclusive.

Effective date.—The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the time period for filing a request for abatement or a claim for refund is started after the mailing of the notice of computational adjustment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

h. Determine penalties at the partnership level

PRESENT LAW

Partnership items include only items that are required to be taken into account under the income tax subtitle. Penalties are not partnership items since they are contained in the procedure and administration subtitle. As a result, penalties may only be asserted against a partner through the application of the deficiency procedures following the completion of the partnership-level proceeding.

HOUSE BILL

The House bill provides that the partnership level proceeding is to include a determination of the applicability of penalties at the partnership level. However, the bill allows partners to raise any partner-level defenses in a refund forum.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

i. Clarify jurisdiction of the Tax Court

PRESENT LAW

Improper assessment and collection activities by the IRS during the 150-day period for filing a petition or during the pendency of any Tax Court proceeding, "may be enjoined in the proper court." Present law may be unclear as to whether this includes the Tax Court.

For a partner other than the Tax Matters Partner to be eligible to file a petition for redetermination of partnership items in any court or to participate in an existing case, the period for assessing any tax attributable to the partnership items of that partner must not have expired. Since such a partner would only be treated as a party to the action if the statute of limitations with respect to them was still open, the law is unclear whether the partner would have standing to assert that the statute of limitations had expired with respect to them.

HOUSE BILL

The House bill clarifies that an action to enjoin premature assessments of deficiencies attributable to partnership items may be brought in the Tax Court. The bill also permits a partner to participate in an action or file a petition for the sole purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired for that person. Additionally, the bill clarifies that the Tax Court has overpayment jurisdiction with respect to affected items.

Effective date.—The provision is effective for partnership taxable years ending after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

j. Treatment of premature petitions filed by certain partners

PRESENT LAW

The Tax Matters Partner is given the exclusive right to file a petition for a readjustment of partnership items within the 90-day period after the issuance of the notice of a final partnership administrative adjustment (FPAA). If the Tax Matters Partner does not

file a petition within the 90-day period, certain other partners are permitted to file a petition within the 60-day period after the close of the 90-day period. There are ordering rules for determining which action goes forward and for dismissing other actions.

HOUSE BILL

The House bill treats premature petitions filed by certain partners within the 90-day period will be treated as being filed on the last day of the following 60-day period under specified circumstances, thus affording the partnership with an opportunity for judicial review that is not available under present law.

Effective date.—The provision is effective with respect to petitions filed after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

k. Clarify bond requirement for appeals from TEFRA proceedings

PRESENT LAW

A bond must be filed to stay the collection of deficiencies pending the appeal of the Tax Court's decision in a TEFRA proceeding. The amount of the bond must be based on the court's estimate of the aggregate deficiencies of the partners.

HOUSE BILL

The House bill clarifies that the amount of the bond should be based on the Tax Court's estimate of the aggregate liability of the parties to the action (and not all of the partners in the partnership). For purposes of this provision, the amount of the bond may be estimated by applying the highest individual rate to the total adjustments determined by the Tax Court and doubling that amount to take into account interest and penalties.

Effective date.—The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

l. Suspend interest where there is a delay in computational adjustment resulting from TEFRA settlements

PRESENT LAW

Interest on a deficiency generally is suspended when a taxpayer executes a settlement agreement with the IRS and waives the restrictions on assessments and collections, and the IRS does not issue a notice and demand for payment of such deficiency within 30 days. Interest on a deficiency that results from an adjustment of partnership items in TEFRA proceedings, however, is not suspended.

HOUSE BILL

The House bill suspends interest where there is a delay in making a computational adjustment relating to a TEFRA settlement.

Effective date.—The provision is effective with respect to settlements entered into after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

m. Extend time for filing a request for administrative adjustment relating to worthless securities and bad debts (sec. 4316(b)) (of the Senate amendment)

PRESENT LAW

The non-TEFRA statute of limitations for filing a claim for credit or refund generally is the later of (1) three years from the date the return in question was filed or (2) two years from the date the claimed tax was paid, whichever is later (sec. 6511(b)). However, an extended period of time, seven years from the date the return was due, is provided for filing a claim for refund of an overpayment resulting from a deduction for a worthless security or bad debt (sec. 6511(d)).

Under the TEFRA partnership rules, a request for administrative adjustment ("RAA") must be filed within three years after the later of (1) the date the partnership return was filed or (2) the due date of the partnership return (determined without regard to extensions) (sec. 6227(a)(1)). In addition, the request must be filed before a final partnership administrative adjustment ("FPAA") is mailed for the taxable year (sec. 6227(a)(2)). There is no special provision for extending the time for filing an RAA that relates to a deduction for a worthless security or an entirely worthless bad debt.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides a special provision for extending the time for the filing of an RAA relating to the deduction by a partnership for a worthless security or bad debt. In these circumstances, in lieu of the three-year period provided in sec. 6227(a)(1), the period for filing an RAA will be seven years from the date the partnership return was due with respect to which the request is made (determined without regard to extensions). The RAA must still be filed before the FPAA is mailed for the taxable year.

Effective date.—The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1992. The conferees understand that, in the past, the IRS issued FPAAs that reflected no administrative adjustment whatsoever to a partnership's tax return. This action created wasteful paperwork, and may have, in some cases truncated the appeals rights of individual partners. The conferees have therefore provided a special rule to permit partners who may have been adversely impacted by this past practice of the IRS to avail themselves of the extended period irrespective of whether an FPAA has been issued.

D. FOREIGN PROVISIONS

1. Deferral of tax on income earned through foreign corporations and exceptions to deferral

PRESENT LAW

U.S. citizens and residents and U.S. corporations (collectively, "U.S. persons") generally are taxed currently by the United States on their worldwide income. Income earned by a foreign corporation, the stock of which is owned in whole or in part by U.S. persons, generally is not taxed by the United States until the foreign corporation repatriates those earnings by payment to its U.S. stockholders.

The Code sets forth several regimes providing exceptions to the general rule deferring U.S. tax on income earned indirectly through a foreign corporation: the controlled foreign corporation rules (secs. 951-964); the foreign personal holding company rules (secs. 551-558); passive foreign investment company (PFIC) rules (secs. 1291-1297); the personal holding company rules (secs. 541-547); the accumulated earnings tax (secs. 531-537); and rules for foreign investment companies (sec. 1246) and electing foreign investment companies (sec. 1247). These separate regimes have complex and overlapping application to foreign corporations with U.S. stockholders.

HOUSE BILL

The House bill replaces the separate anti-deferral regimes of present law with a unified set of rules. The House bill retains the controlled foreign corporation rules as the foundation of its unified anti-deferral regime. It includes a modified version of the PFIC rules while eliminating the other regimes as redundant to one or the other.

The House bill creates a single definition of a passive foreign corporation (PFC) that will unify and replace the foreign personal holding company and PFIC definitions. The rules applicable to PFCs represent a hybrid of characteristics of the foreign personal holding company rules, the PFIC rules, and the controlled foreign corporation rules (subpart F), plus a new mark-to-market regime, as well as a variety of simplifying or technical changes to or clarifications of rules under the existing systems.

One such clarification provides that any foreign trade income of a foreign sales corporation does not constitute passive income for purposes of the PFIC definition.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, with three modifications.

First, the Senate amendment does not include the clarification of present law with respect to the income of foreign sales corporations.

Second, the Senate amendment includes a netting rule for the application of the PFC income and asset tests to sale and repurchase transactions in securities,[1] entered into by a foreign corporation that is engaged in the active conduct of a trade or business as a dealer in securities, and properly treated as offsetting agreements in a "matched book." Such offsetting agreements are referred to as "qualified matched transactions." Under the Senate amendment, offsetting debt liabilities and assets resulting from qualified matched transactions are netted, and only the net asset position (if any) is treated as an asset held by a foreign corporation for purposes of applying the PFC definition. Similarly, the Senate amendment provides that the offsetting interest expense and income resulting from qualified matched transactions is netted and the net income, if positive, is treated as an item of gross income under the PFC definition. The reduction in gross income or assets that may result from application of this provision to a corporation does not apply for any purpose other than testing a foreign corporation for PFC status.

Third, the Technical Explanation of the Senate Finance Committee amendment to H.R. 11 states that the committee intends that a study be conducted by the Treasury Department as to the tax treatment for purposes of the PFC rules of securities sale and repurchase transactions and securities lending and borrowing transactions, and the consequences and merits of possible changes

---

[1] The Technical Explanation of the Senate Finance Committee amendment to H.R. 11 sometimes refers to such sale and repurchase agreements by using two industry shorthand terms: "repo" and "reverse."

in such tax treatment. The Technical Explanation further states that the committee intends that the Treasury study be completed within one year after the date of enactment of the bill.

CONFERENCE AGREEMENT

The conference agreement includes all provisions of both the House bill and the Senate amendment, plus certain technical corrections described below.

Specifically, the conference agreement includes the House bill's clarification of present law with respect to the income of foreign sales corporations, the Senate amendment's netting rule for the application of the PFC income and asset tests to income and assets arising from qualified matched transactions, and the Treasury Department study described in the Technical Explanation of the Senate Finance Committee amendment to H.R. 11.

The conferees anticipate that Treasury regulations will provide guidance as to what constitutes a "matched book;" what sale and repurchase transactions are considered to offset each other in a "matched book;" what constitutes the entry into matched book transactions in the active conduct of a trade or business of being a dealer in securities; and how the netting procedure will be carried out to arrive at amounts of gross income and assets for PFC definitional purposes.[2]

The conferees intend that, in practice, the effect of this provision shall be only to mitigate the effect of the PFC rules on a company insofar as it is actively engaged in the business of providing the services of a financial intermediary to unrelated parties, rather than used as a vehicle for investment in stock, securities, or other financial products on behalf of its shareholders or other related parties. The conferees are aware of other instances in the Code and regulations where it is necessary to draw similar distinctions, and invite the Treasury to consider whether any tests employed in those provisions are suitable in light of the purposes of provision.

For example, rules under subpart F may require a determination whether a foreign corporation is a regular dealer within the meaning of section 954(c)(1)(B) in stocks, securities, or derivative financial products during its taxable year. As another example, under the PFIC rules of present law (as under the PFC rules in the bill) a foreign corporation, to the extent provided in regulations, may be exempted from passive characterization of its interest income from the active conduct of a banking business. Guidance has been issued under this provision analogous to the guidance that might be issued under the matched-book provision. As a third example, guidance has been issued under the foreign tax credit limitation regulations for identifying financial services entities.

[2] The conferees are informed that shorthand terms other than "repo" and "reverse" may also be used to describe sale and repurchase transactions that, under the conference agreement, may be within the scope of the Treasury's authority to treat as parts of a qualified matched transaction. Although the conferees are aware that the terms "repo" and "reverse" were used to describe sale and repurchase transactions in the Technical Explanation of the Senate Finance Committee amendment to H.R. 11, the conferees do not intend that the application of the conference agreement be affected by the use of shorthand terms other than these to refer to transactions described in the conference agreement.

As in the cases of the PFIC bank rules and the foreign tax credit limitation rules on financial services entities, the conferees believe that the Treasury could consider a variety of activities that may indicate the existence of an active securities business.[3]

In addition, in appropriate circumstances, the Treasury might consider it relevant that a foreign corporation is or is not registered or authorized in the country in which it conducts its principal securities dealer operations to conduct the bona fide securities activities that it performs in that country, and is subject to the appropriate securities regulatory authorities of that jurisdiction.

The foregoing list of possible approaches and factors to take into account is not intended to be exclusive of other approaches or factors not mentioned. Nor is it intended to suggest that the presence of any of the factors mentioned above, or the passing or failing of any test existing under present law, must be used by Treasury to determine the outcome of the question whether a foreign corporation is engaged in the active conduct of a trade or business as a dealer in securities. The conferees do not intend to limit the Treasury's discretion to fashion rules suitable to the purposes of the provision.

The conference agreement also requires that the Secretary of the Treasury conduct a study as to the tax treatment for purposes of the PFC rules of securities sale and repurchase transactions and securities lending and borrowing transactions. The Secretary is required, not later than one year after the date of the enactment of the bill, to submit to the House Ways and Means Committee and the Senate Finance Committee a report on the required study, together with such recommendations as the Secretary may deem advisable.

In addition, the conference agreement includes technical corrections that ensure that two aspects of the bill will be understood and interpreted consistently with the intention expressed both in the Report of the House Ways and Means Committee to accompany H.R. 11 and in the Technical Explanation of the Senate Finance Committee amendment to H.R. 11. First, the conference agreement

[3] Such activities might include: (a) purchasing or selling stock, debt obligations, commodity futures or other securities or derivative financial products (including notional principal contracts) from or to unrelated persons, and holding stock, debt obligations and other securities as inventory for sale to customers; (b) arranging notional principal contracts and other hedging transactions for, or entering into such transactions or any other derivative financial products with, unrelated persons who are customers; (c) arranging foreign exchange transactions for, or engaging in foreign exchange transactions with, unrelated persons who are customers; (d) underwriting issues of stocks, debt obligations or other securities under best-efforts or firm-commitment agreements with unrelated persons; (e) purchasing, selling, discounting, or negotiating on a regular basis for unrelated persons notes, drafts, checks, bills of exchange, acceptances or other evidences of indebtedness; (f) lending stocks or securities to unrelated persons; (g) providing finance leasing (which would not qualify as active leasing income under sec. 954(c)(2)(A)) to unrelated persons; (h) engaging in hedging activities directly related to bona fide securities activities described in items (a) through (g) of this list; (i) servicing mortgages; (j) investment banking activities; (k) providing financial or investment advisory services, investment management services, fiduciary services, trust services, or custodial services to unrelated persons; (l) providing margin or other financing for customers secured by securities or money market instruments, including repurchase agreements, or financing in connection with any of the bona fide securities activities described in items (a) through (k) of this list; (m) disposing of any property (whether tangible or intangible, personal or real) that was used in the active conduct of the securities business, but only to the extent that the property was held in connection with a bona fide securities activity; and (n) any other activity that the Secretary may determine to be a bona fide securities activity that is commonly conducted by active foreign securities dealers in the ordinary course of their securities business.

clarifies that the interest-charge regime does not apply so as to impose additional tax and interest on the portion of gain deemed attributable to years prior to the first year of the taxpayer's holding period for which the foreign corporation is a PFIC or PFC under the law then applicable. Second, the conference agreement clarifies that the interest-charge regime does not apply to a shareholder with respect to stock in a PFC that was subject to current inclusion of income (whether elective or mandatory) for all years for which the foreign corporation is a PFIC or PFC under the law then applicable.

2. Treatment of controlled foreign corporations

PRESENT LAW

Treatment of controlled foreign corporation earnings

In general

A U.S. shareholder generally treats dividends from a controlled foreign corporation as ordinary income from foreign sources that carries both direct and indirect foreign tax credits. Under look-through rules, the income and credits are subject to those foreign tax credit limitations which are consistent with the character of the income of the foreign corporation.

Several Code provisions result in similar tax treatment of a U.S. shareholder if it either disposes of the controlled foreign corporation stock, or the controlled foreign corporation realizes certain types of income (including income with respect to lower-tier controlled foreign corporations). First, under section 1248, gain resulting from the disposition by a U.S. person of stock in a foreign corporation that was a controlled foreign corporation with respect to which the U.S. person was a U.S. shareholder in the previous five years is treated as a dividend to the extent of allocable earnings.

Second, a controlled foreign corporation has subpart F income when it realizes gain on disposition of stock and, ordinarily, when it receives a dividend. Under sections 951 and 960, such subpart F income may result in taxation to the U.S. shareholder similar (but not identical) to that on a dividend from the controlled foreign corporation. In addition to provisions for characterizing income and credits in these situations, the Code also provides certain rules that adjust basis, or otherwise result in modifying the tax consequences of subsequent income, to account for these and other subpart F income inclusions.

Third, when in exchange for property any corporation (including a controlled foreign corporation) acquires stock in another corporation (including a controlled foreign corporation) controlled by the same persons that control the acquiring corporation, earnings of the acquiring corporation (and possibly the acquired corporation) may be treated under section 304 as having been distributed as a dividend to the seller.

For foreign tax credit separate limitation purposes, a controlled foreign corporation is not treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign cor-

poration and except as provided in regulations, the recipient of the distribution was a U.S. shareholder in such corporation.[1] The consequence of not being treated as a section 902 corporation is application of the so-called "look-through" rule. That is, dividends paid by such controlled foreign corporation to its U.S. shareholder are characterized for separate limitation purposes by reference to the character of the underlying earnings of the controlled foreign corporation.

Lower-tier controlled foreign corporations

For purposes of applying the separate foreign tax credit limitations, receipt of a dividend from a lower-tier controlled foreign corporation by an upper-tier controlled foreign corporation may result in a subpart F income inclusion for the U.S. shareholder that is treated as income in the same limitation category as the income of the lower-tier controlled foreign corporation. The income inclusion of the U.S. shareholder may carry deemed-paid credits for foreign taxes paid by the lower-tier controlled foreign corporation, and the basis of the U.S. shareholder in the stock of the first-tier controlled foreign corporation is increased by the amount of the inclusion. If, on the other hand, the upper-tier controlled foreign corporation sells stock of a lower-tier controlled foreign corporation, then the gain generally is also included in the income of the U.S. shareholder as subpart F income and the U.S. shareholder's basis in the stock of the first-tier controlled foreign corporation is increased to account for the inclusion, but the inclusion is not treated for foreign tax credit limitation purposes by reference to the nature of the income of the lower-tier controlled foreign corporation. Instead it generally is treated as passive income.

If subpart F income of a lower-tier controlled foreign corporation is included in the gross income of a U.S. shareholder, no provision of present law allows adjustment of the basis of the upper-tier controlled foreign corporation's stock in the lower-tier controlled foreign corporation.

Subpart F inclusions in year of disposition

The subpart F income earned by a foreign corporation during its taxable year is taxed to the persons who are U.S. shareholders of the corporation on the last day, in that year, on which the corporation is a controlled foreign corporation. In the case of a U.S. shareholder who acquired stock in a controlled foreign corporation during the year, such inclusions are reduced by all or a portion of the amount of dividends paid in that year by the foreign corporation to any person other than the acquirer with respect to that stock. The reduction is the lesser of the amount of dividends with respect to such stock received by other persons during the year or

[1] Under proposed regulations recently issued by the IRS, if a controlled foreign corporation distributes a dividend to an upper-tier controlled foreign corporation or to a United States shareholder that owns directly or indirectly more then 90 percent of the total combined voting power of the controlled foreign corporation at the time of the distribution, and the dividend is attributable to earnings and profits accumulated during a period in which the distributing corporation was a controlled foreign corporation but the 90 percent or more United States shareholder was not a United States shareholder of the corporation, the dividend generally would be treated as a dividend from a noncontrolled section 902 corporation. (Prop. Treas. Reg. sec. 1.904-4(g)(3)(ii).

the amount determined by multiplying the subpart F income for the year by the proportion of the year during which the acquiring shareholder did not own the stock.

Distributions of previously taxed income

If in a year after the year of a subpart F income inclusion, a U.S. shareholder in the controlled foreign corporation receives a distribution from the corporation, the distribution may be deemed to come first out of the corporation's previously taxed income and, therefore, may be excluded from the U.S. shareholder's income. However, a distribution by a foreign corporation to a domestic corporation of earnings and profits previously taxed under subpart F is treated as an actual dividend, solely for purposes of determining the indirect foreign tax credit available to the domestic corporation (sec. 960(a)(3)).

In addition, the domestic corporation is permitted to increase its foreign tax credit limitation in the year of the distribution of previously taxed earnings and profits in an amount equal to the excess of the amount by which its foreign tax credit limitation for the year of the subpart F inclusion was increased as a result of that inclusion, over the amount of foreign taxes which were allowable as a credit in that year and which would not have been so allowable but for the subpart F inclusion (sec. 960(b)). The increase in the foreign tax credit limitation may not, however, exceed the amount of the foreign taxes taken into account under this provision with respect to the distribution of previously taxed earnings and profits. In order for this rule to apply, the domestic corporation either must have elected to credit foreign taxes in the year of the subpart F inclusion or must not have paid or accrued any foreign taxes in such year, and it must elect the foreign tax credit in the year of the distribution of previously taxed earnings and profits.

Treatment of United States source income earned by a controlled foreign corporation

As a general rule, subpart F income does not include income earned from sources within the United States if the income is effectively connected with the conduct of a U.S. trade or business by the controlled foreign corporation. This general rule does not apply, however, if the income is exempt from, or subject to a reduced rate of, U.S. tax pursuant to a provision of a U.S. treaty.

Indirect foreign tax credits

A U.S. corporation owning at least 10 percent of the voting stock of a foreign corporation is treated as if it had paid a share of the foreign income taxes paid by the foreign corporation in the year in which the foreign corporation's earnings and profits become subject to U.S. tax as dividend income of the U.S. shareholder (sec. 902(a)).

A U.S. corporation may also be deemed to have paid taxes paid by a second- or third-tier foreign corporation. That is, where a first-tier foreign corporation pays a dividend to a 10-percent-or-more U.S. corporate shareholder, then for purposes of deeming the U.S. corporation to have paid foreign tax, the first-tier foreign corporation may be deemed to have paid a share of the foreign taxes paid

by a second-tier foreign corporation of which the first-tier foreign corporation owns at least 10 percent of the voting stock, and from which the first-tier foreign corporation received dividends. The same principle applies to dividends from a second-tier or third-tier foreign corporation. No taxes paid by a second- or third-tier foreign corporation are deemed paid by the first- or second-tier foreign corporation, respectively, unless the product of the percentage ownership of voting stock at each level from the U.S. corporation down equals at least 5 percent (sec. 902(b)). Under present law, foreign taxes paid below the third tier of foreign corporations are not eligible for the indirect foreign tax credit.

An indirect foreign tax credit generally is also available to a U.S. corporate shareholder meeting the requisite ownership threshold with respect to inclusions of subpart F income from controlled foreign corporations (sec. 960(a)).[2] Moreover, an indirect foreign tax credit may also be available to U.S. corporate shareholders with respect to inclusions of income from passive foreign investment companies.

Investments in U.S. property by controlled foreign corporations

As described above in Item D.1., investments by controlled foreign corporations in U.S. property (e.g., certain debt obligations of U.S. persons) are sometimes treated similarly to repatriations (sec. 951(a)(1)(B)). A controlled foreign corporation is not treated as having repatriated foreign earnings if it invests in an obligation of an unrelated U.S. corporation, as defined specially for this purpose (sec. 956(b)(2)(F)).

HOUSE BILL

In general

The House bill makes a number of modifications in the treatment of income derived from the disposition of stock in a controlled foreign corporation. The House bill provides deemed dividend treatment for gains on dispositions of lower-tier controlled foreign corporations. Where the lower-tier controlled foreign corporation previously earned subpart F income, the House bill permits the amount of gain taxed to the U.S. shareholder to be adjusted for previous income inclusions. Where proceeds from the sale of stock to a controlled foreign corporation that previously has earned subpart F income would be treated as a dividend under the principles of section 304, the House bill expressly permits exclusion of the deemed section 304 dividend from taxation to the extent of the previously taxed earnings and profits of the controlled foreign corporation from which the property was deemed to be distributed. (Appropriate basis adjustments also are permitted to be made.) Where a controlled foreign corporation (whether or not it is a lower-tier controlled foreign corporation) earns subpart F income in a year in which a U.S. shareholder sells its stock, in a transaction that does not result in the foreign corporation ceasing to be a controlled for-

[2] Unlike the indirect foreign tax credit for actual dividend distributions, the indirect credit for subpart F inclusions can be available to individual shareholders in certain circumstances if an election is made (sec. 962).

eign corporation, the House bill contains statutory language providing for a proportional reduction in the taxation of the subpart F income in that year to the acquiring U.S. shareholder.

The House bill contains four additional provisions related to controlled foreign corporations. First, the House bill repeals the limitation on look-through treatment (for foreign tax credit separate limitation purposes) of dividends from controlled foreign corporations to U.S. shareholders out of earnings from periods in which the payor was a controlled foreign corporation, but the dividend recipient was not a U.S. shareholder of the controlled foreign corporation. Second, the House bill provides regulatory authority to develop a simplified mechanism for computing indirect foreign tax credits and increases in foreign tax credit limitations resulting upon certain distributions by controlled foreign corporations of previously taxed earnings and profits. Third, the House bill clarifies the effect of a treaty exemption or reduction of the branch profits tax on the determination of subpart F income. Fourth, the House bill extends application of the indirect foreign tax credit to fourth, fifth-, and sixth-tier controlled foreign corporations where the necessary ownership thresholds (as extended under the House bill to these tiers) are satisfied.

Lower-tier controlled foreign corporations

Characterization of gain on stock disposition

The House bill provides that if a controlled foreign corporation is treated as having gain from the sale or exchange of stock in a foreign corporation, the gain is treated as a dividend to the same extent that it would have been so treated under section 1248 if the controlled foreign corporation were a U.S. person. This provision, however, does not affect the determination of whether the corporation whose stock is sold or exchanged is a controlled foreign corporation.

Thus, for example, if a U.S. corporation owns 100 percent of the stock a foreign corporation, which owns 100 percent of the stock of a second foreign corporation, then under the House bill, any gain of the first corporation upon a sale or exchange of stock of the second corporation is treated as a dividend for purposes of subpart F income inclusions to the U.S. shareholder, to the extent of earnings and profits of the second corporation attributable to periods in which the first foreign corporation owned the stock of the second foreign corporation while the latter was a controlled foreign corporation with respect to the U.S. shareholder.

As another example, assume that the U.S. corporation has always owned 40 percent of the voting stock and 60 percent of the value of all of the stock of a foreign corporation, which has always owned 40 percent of the voting stock and 60 percent of the value of all of the stock of a second foreign corporation. All the other stock of the foreign corporations has always been owned by foreign individuals unrelated to the U.S. corporation. In this case, the second foreign corporation has never been a controlled foreign corporation. Therefore, none of the gain of the first corporation upon a sale of stock of the second corporation is treated as a dividend.

Gain on disposition of stock in a related corporation created or organized under the laws of, and having substantial part of assets in a trade or business in, the same foreign country as the gain recipient, even if recharacterized as a dividend under the House bill, is not therefore excluded from foreign personal holding company income under the same-country exception that applies to actual dividends.

The House bill provides that for purposes of this provision, a controlled foreign corporation is treated as having sold or exchanged stock if, under any provision of subtitle A of the Code, the controlled foreign corporation is treated as having gain from the sale or exchange of such stock. Thus, for example, if a controlled foreign corporation distributes to its shareholder stock in a foreign corporation, and the distribution results in gain being recognized by the controlled foreign corporation under section 311(b) as if the stock were sold to the shareholder for fair market value, the House bill makes clear that for purposes of this provision, the controlled foreign corporation is treated as having sold or exchanged the stock.

The House bill also repeals a provision added to the Code by the Technical and Miscellaneous Revenue Act of 1988 [3] (the "1988 Act") which, except as provided by regulations, requires a recipient of a distribution from a controlled foreign corporation to have been a United States shareholder of that controlled foreign corporation for the period during which the earnings and profits which gave rise to the distribution were generated in order to avoid treating the distribution as one coming from a noncontrolled section 902 corporation. Thus, under the House bill, a controlled foreign corporation is not treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation, whether or not the recipient of the distribution was a U.S. shareholder of the corporation when the earnings and profits giving rise to the distribution were generated.

Adjustments to basis of stock

The House bill also provides that when a lower-tier controlled foreign corporation earns subpart F income, and stock in that corporation is later disposed of by an upper-tier controlled foreign corporation, the resulting income inclusion of the U.S. shareholders are, under regulations, adjusted to account for previous inclusions, in a manner similar to the adjustments currently provided to the basis of stock in a first-tier controlled foreign corporation. Thus, just as the basis of a U.S. shareholder in a first-tier controlled foreign corporation rises when subpart F income is earned and falls when previously taxed income is distributed, so as to avoid double taxation of the income on a later disposition, it is intended that by regulation the subpart F income from gain on the disposition of a lower-tier controlled foreign corporation generally would be reduced by income inclusions of earnings that were not subsequently distributed by the lower-tier controlled foreign corporation. It is in-

[3] P.L. 100-647, sec. 1012(a)(10).

tended that the Secretary will have sufficient flexibility in promulgating regulations under this provision to permit adjustments only in those cases where, by virtue of the historical ownership structure of the corporations involved, the Secretary is satisfied that the inclusions for which adjustments can be made can be clearly identified.

For example, assume that a U.S person is the owner of all of the stock of a first-tier controlled foreign corporation which, in turn, is the sole shareholder of a second-tier controlled foreign corporation. In year 1, the second-tier controlled foreign corporation earns $100 of subpart F income which is included in the U.S. person's gross income for that year. In year 2, the first-tier controlled foreign corporation disposes of the second-tier controlled foreign corporation's stock and recognizes $300 of income with respect to the disposition. All of that income would constitute subpart F foreign personal holding company income. Under the House bill, the Secretary is granted regulatory authority to reduce the U.S. person's year 2 subpart F inclusion by $100—the amount of year 1 subpart F income of the second-tier controlled foreign corporation that was included, in that year, in the U.S. person's gross income. Such an adjustment would, in effect, allow for a step-up in the basis of the stock of the second-tier controlled foreign corporation to the extent of its subpart F income previously included in the U.S. person's gross income.

As another example, assume the same facts as in the preceding paragraph except that in year 2, the first-tier controlled foreign corporation distributes the stock of the second-tier controlled foreign corporation to the U.S. person. Assume that as a result of the distribution, the first-tier controlled foreign corporation recognizes taxable income of $300 under section 311(b). This income represents subpart F income, $100 of which is due to no adjustment having been made to the basis of the second-tier controlled foreign corporation's stock for its year 1 subpart F income. The House bill contemplates that in such a situation, the $300 of subpart F income would be reduced under regulations to $200 to account for the year 1 subpart F income inclusion.

Subpart F inclusions in year of disposition

If a U.S. shareholder acquires the stock of a controlled foreign corporation from another U.S. shareholder during a taxable year of the controlled foreign corporation in which it earns subpart F income, the House bill reduces the acquirer's subpart F inclusion for that year by a portion of the amount of the dividend deemed (under sec. 1248) to be received by the transferor. The portion by which the inclusion is reduced (as is currently the case if a dividend was paid to the previous owner of the stock) would not exceed the lesser of the amount of dividends with respect to such stock deemed received (under sec. 1248) by other persons during the year or the amount determined by multiplying the subpart F income for the year by the proportion of the year during which the acquiring shareholder did not own the stock.

Avoiding double inclusions in other cases

The House bill clarifies the appropriate scope of regulatory authority with respect to the treatment of cross-chain section 304 dividends out of the earnings of controlled foreign corporations that were previously included in the income of a U.S. shareholder under subpart F. The House bill contemplates that in such a case, the Secretary in his discretion may by regulation treat such dividends as distributions of previously taxed income, with appropriate basis adjustments. It is also anticipated that other occasions may arise where the exercise of similar regulatory authority may be appropriate to avoid double income inclusions, or an inclusion or exclusion of income without a corresponding basis adjustment. Therefore, the House bill states that, in addition to cases involving section 304, the Secretary may by regulation modify the application of subpart F in any other case where there would otherwise be a multiple inclusion of any item of income (or an inclusion or exclusion without an appropriate basis adjustment) by reason of the structure of a U.S. shareholder's holdings in controlled foreign corporations or by reason of other circumstances. The House bill is not intended to create any inference as to the application of present law in these cases.

Foreign tax credit in year of receipt of previously taxed income

With respect to the present-law provisions which permit a foreign tax credit to be claimed in the case of a distribution of previously taxed income, the House bill provides authority for Treasury regulations to establish a simplified method for computing the increase in foreign tax credit limitation that results from the application of these provisions. It is understood that the Secretary has regulatory flexibility in the determination of the amount of creditable foreign taxes on or with respect to the accumulated earnings and profits of a foreign corporation from which a distribution of previously taxed income is made, which were not deemed paid by the domestic corporation in a prior taxable year.

The House bill makes clear that the regulations may require taxpayers to use any simplified methods so established, rather than making the use of such methods elective by taxpayers. The House bill does not mandate, however, that regulations provide such simplified methods, or in the case that such methods are provided, that they be made uniformly applicable to all taxpayers.

For example, in certain situations the Treasury Secretary might deem it appropriate not to require taxpayers to trace specific items of previously taxed income of specific controlled foreign corporations and to associate those items with specific amounts of excess foreign tax credit limitation. Rather, regulations might allow for some sort of simplified approach for accounting for excess limitation amounts (allocated to the various foreign tax credit separate limitation categories from which they originally arose) and for utilization of portions of these amounts upon distributions of previously taxed income from the same categories.

Treatment of United States income earned by a controlled foreign corporation

The House bill provides that an exemption or reduction by treaty of the branch profits tax that would be imposed under section 884 on a controlled foreign corporation does not affect the general statutory exemption from subpart F income that is granted for U.S. source effectively connected income. For example, assume a controlled foreign corporation earns income of a type that generally would be subpart F income, and that income is earned from sources within the United States in connection with business operations therein. Further assume that repatriation of that income is exempted from the U.S. branch profits tax under a provision of an applicable U.S. income tax treaty. The House bill provides that, notwithstanding the treaty's effect on the branch tax, the income is not treated as subpart F income as long as it is not exempt from U.S. taxation (or subject to a reduced rate of tax) under any other treaty provision.

Indirect foreign tax credit

The House bill extends the application of the indirect foreign tax credit (secs. 902 and 960) to certain taxes paid or accrued by certain fourth-, fifth-, and sixth-tier foreign corporations. In general, three requirements must be satisfied by a foreign company at any of these tiers to qualify for the credit. First, the company must be a controlled foreign corporation. Second, the domestic corporation referred to in section 902(a) must be a U.S. shareholder (as defined in section 951(b)) with respect to the foreign company. Third, the product of the percentage ownership of voting stock at each level from the U.S. corporation down must equal at least 5 percent. The House bill limits the application of the indirect foreign tax credit below the third tier to taxes paid or incurred in taxable years during which the payor is a controlled foreign corporation. No inference is intended as to the availability of indirect foreign tax credits, under present law, for taxes paid by foreign corporations in the first three tiers, for periods prior to the time when the present-law ownership requirements were met as to those corporations. All foreign taxes paid below the sixth tier of foreign corporations remain ineligible for the indirect foreign tax credit.

Investments in U.S. property by controlled foreign corporations

The Ways and Means Committee report to accompany the House bill states the committee's understanding that a controlled foreign corporation is not treated as having repatriated foreign earnings if it invests in an obligation of an unrelated U.S. corporation. A similar rule, however, is not applicable to an investment in an obligation of an unrelated U.S. person other than a corporation. The report states that the committee requests that the Treasury Department study the tax treatment of investments by controlled foreign corporations in obligations of U.S. persons other than corporations, and produce a report of such study by December 31, 1992. The study is to include the Treasury's views as to whether those rules should be amended insofar as they relate to the treatment of investments by controlled foreign corporations in the obli-

gations of U.S. persons other than corporations, along with a discussion of the merits and consequences of any such amendment.

Effective dates

Lower-tier controlled foreign corporations

The provision of the House bill treating gains on dispositions of stock in lower-tier controlled foreign corporations as dividends under section 1248 principles applies to gains recognized on transactions occurring after date of enactment of the House bill. The provision of the House bill that expands look-through treatment, for foreign tax credit limitation purposes, of dividends from controlled foreign corporations, is effective for distributions after the date of the House bill's enactment.

The House bill's provision providing for regulatory adjustments to U.S. shareholder inclusions, with respect to gains of controlled foreign corporations from dispositions of stock in lower-tier controlled foreign corporations that previously had subpart F income, is effective for determining inclusions for taxable years of U.S. shareholders beginning after December 31, 1992. Thus, the House bill permits regulatory adjustments to an inclusion occurring after the effective date to account for previous subpart F income inclusions occurring both prior to and subsequent to the effective date of the provision.

Subpart F inclusions in year of disposition

The provision of the House bill permitting dispositions of stock to be taken into consideration in determining a U.S. shareholder's subpart F inclusion for a taxable year is effective with respect to dispositions occurring after the date of enactment of the House bill.

Distributions of previously taxed income

The provision of the House bill allowing the Secretary to make regulatory adjustments to avoid double inclusions in cases such as those to which section 304 applies takes effect on the date the House bill is enacted.

Foreign tax credit in year of receipt of previously taxed income

The provision of the House bill granting regulatory authority to establish simplified methods for determining the amount of increase in foreign tax credit limitation resulting from a distribution of previously taxed income is effective as of the date of enactment of the House bill.

Treatment of United States source income earned by a controlled foreign corporation

The provision of the House bill concerning the effect of treaty exemptions from or reductions of the branch profits tax on the determination of subpart F income is effective for taxable years beginning after December 31, 1986.

Indirect foreign tax credit

The provision of the House bill which extends application of the indirect foreign tax credit to certain controlled foreign corporations below the third tier is effective for foreign taxes paid or incurred by controlled foreign corporations for taxable years of such corporations beginning after the date of enactment of the House bill.

In the case of any chain of foreign corporations the taxes of which would be eligible for the indirect foreign tax credit, under present law or under the House bill, but for the denial of indirect credits below the third or sixth tier, as the case may be, no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of enactment of the House bill shall have the effect of permitting taxes to be taken into account under the indirect foreign tax credit provisions of the Code which could not have been taken into account under those provisions but for such transaction. As one example, no such transaction shall have the effect of permitting credits for taxes which, but for such transaction, would have been noncreditable (given the effective date provisions of the House bill) because they are taxes of a fourth-, fifth-, or sixth-tier corporation for a year beginning *before* the date that the House bill is enacted. No inference is intended regarding the creditability or noncreditability of such taxes under present law.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that it does not include the provision of the House bill that extends the application of the indirect foreign tax credit to taxes paid by certain fourth-, fifth-, and sixth-tier controlled foreign corporations.

In addition, the explanation of the Senate amendment does not include a request of Treasury to perform a study on investments by controlled foreign corporations in obligations of U.S. persons other than corporations.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following addition. Under the conference agreement, the Secretary is required to conduct a study of the tax treatment of investments by controlled foreign corporations in obligations of U.S. persons other than corporations. The study is to include the Treasury's views as to whether those rules should be amended insofar as they relate to the treatment of investments by controlled foreign corporations in the obligations of U.S. persons other than corporations, along with a discussion of the merits and consequences of any such amendment. A report detailing the results of the study, together with such recommendations as the Secretary may deem advisable, is to be submitted to the Committee on Ways and Means and the Committee on Finance not later than December 31, 1992.

3. Translation of foreign taxes into U.S. dollar amounts

PRESENT LAW

Translation of foreign taxes

Foreign income taxes paid in foreign currencies are required to be translated into U.S. dollar amounts using the exchange rate as of the time such taxes are paid to the foreign country or U.S. possession (sec. 986(a)(1)). This rule applies equally to foreign taxes paid directly by U.S. taxpayers, which are creditable only in the year paid or accrued (or during a carryover period), and to foreign taxes paid by foreign corporations that are deemed paid by a U.S. corporation, and hence creditable, in the year that the U.S. corporation receives a dividend or income inclusion.

Redetermination of foreign taxes

For taxpayers who utilize the accrual basis of accounting for determining creditable foreign taxes, accrued and unpaid foreign tax liabilities denominated in foreign currencies are translated into U.S. dollar amounts at the exchange rate as of the last day of the taxable year of accrual.[1] In certain cases where a difference exists between the dollar value of accrued foreign taxes and the dollar value of those taxes when paid, a redetermination (or adjustment) of foreign taxes is required.[2] Generally, such an adjustment may be attributable to one of three causes. One such cause would be a refund of foreign taxes. Second, a foreign tax redetermination may be required because the amount of foreign currency units actually paid differs from the amount of foreign currency units accrued. These first two cases generally give rise to a so-called "section 905(c) regular adjustment." Third, a redetermination may arise due to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment giving rise to a so-called "section 905(c) translation adjustment."

As a general matter, a redetermination of foreign tax paid or accrued directly by a U.S. person requires notification of the Internal Revenue Service and a redetermination of U.S tax liability for the taxable year for which the foreign tax was claimed as a credit. Exceptions to this rule apply for de minimis amounts of foreign tax redeterminations.[3] In the case of redeterminations of foreign taxes that qualify for the deemed-paid foreign tax credit under sections 902 and 960, taxpayers generally are required to make appropriate adjustments to the pools of earnings and profits and foreign taxes.[4]

HOUSE BILL

In general

The House bill sets forth two sets of operating rules for the translation of foreign taxes. The first set establishes new rules for the translation of certain accrued foreign taxes. The other set

[1] Temp. Treas. Reg. sec. 1.905-3T(b)(1).
[2] Temp. Treas. Reg. sec. 1.905-3T(c).
[3] Temp. Treas. Reg. sec. 1.905-3T(d)(1).
[4] Temp. Treas. Reg. sec. 1.905-3T(d)(2); Notice 90-26, 1990-1 C.B. 336.

modifies the rules of present law for translating all other foreign taxes.

Translation of foreign taxes

Translation of certain accrued foreign taxes

With respect to taxpayers who take foreign income taxes into account when accrued for purposes of determining the foreign tax credit, the House bill generally permits foreign taxes to be translated at the average exchange rate for the taxable year to which such taxes relate. If tax in excess of the accrued amount is actually paid, such excess amount would be translated using the exchange rate in effect as of the time of payment.

This set of rules does not apply (1) to taxpayers that are not on the accrual basis for determining creditable foreign taxes, (2) with respect to taxes of an accrual-basis taxpayer that are actually paid in a taxable year prior to the year to which they relate, or (3) to the extent provided in regulations, to tax payments denominated in a currency determined to be an inflationary currency in accordance with such regulations. It is intended that the Secretary will have discretion to define "inflationary" for this purpose so as to take into account the particular need under this provision to avoid distortions in the computation of the foreign tax credit. In addition, as discussed in detail below, this set of rules does not apply to, and thus a redetermination of foreign tax is required for, any foreign income tax paid after the date two years after the close of the taxable year to which such taxes relate.

For example, assume that in year 1 a taxpayer accrues 1,000 units of foreign tax that relate to year 1. Further assume that as of the end of year 1 the tax is unpaid and the currency involved is not treated as inflationary by the Secretary for translation purposes. In this case, the House bill provides that the taxpayer would translate 1,000 units of accrued foreign tax into U.S. dollars at the average exchange rate for year 1.[5] If the 1,000 units of tax were paid by the taxpayer in either year 2 or year 3, no redetermination of foreign tax would be required. If, any portion of the tax so accrued remained unpaid as of the end of year 3, however, the taxpayer would be required to redetermine its foreign tax accrued in year 1 to account for the accrued but unpaid tax.

As another example, assume a taxpayer accrues 1,000 units of foreign tax in year 2, but pays the tax in year 1. Also assume that the tax relates to year 2. In this case, the taxpayer would translate the tax using the exchange rate as of the time the tax is paid (i.e., using the applicable year 1 exchange rate) since the tax is paid in a year prior to the year to which it relates.

As an illustration of what is meant by the taxable year to which taxes relate, assume that a foreign corporation is charged by a foreign government with an income tax of 100 units for 1993. Assume that the currency involved is not treated as inflationary by the Secretary for translation purposes under the House bill. Due to a contest between the foreign government and the corporation that ends in 1994, the 100 units of tax are not paid until 1994. Assume

[5] The same result would occur if the 1,000 units of tax were both accrued and paid in year 1.

that under the U.S. rules governing accrual, the foreign tax accrues *for* 1993 but does not do so *until* 1994.[6] Under the House bill, the taxes will be translated at the rate in effect for 1993, because the taxes relate to 1993, even though they did not accrue until 1994. If instead the contest was over, and the taxes were accrued and paid, in 1998, the translation rate used would be that of 1998, rather than 1993, because 1998 is more than 2 years after the end of 1993. Now assume that the contest was over in 1998, but the taxes were deposited in 1994 and not accrued until 1998. These taxes are paid before the beginning of the year in which the taxes were accrued (1998), but after the year to which the taxes relate (1993). Thus, under the House bill, the taxes may be translated at the rate for the year (1993) to which the taxes relate. If the taxes are instead paid in 1996, under the House bill they will be translated at the relevant rate for 1996 because 1996 is more than 2 years after the end of 1993.

As an additional illustration of what is meant by the House bill as the taxable year to which taxes relate, assume that a foreign corporation accrues a foreign income tax of 100 units of noninflationary currency for 1993. Further assume that the actual amount of foreign tax liability of the foreign corporation for 1993 is 110 units, all of which is paid in 1994. Under the bill, the 110 units of foreign tax are translated at the rate in effect for 1993 because the taxes relate to 1993, even though the total tax liability for that year was not actually accrued by the taxpayer in 1993.

Finally, assume that under foreign law, a foreign income tax liability accrues in 1998 under a long-term contract method of accounting, but advance deposits of that liability are made in each of the years 1993 through 1997. Under the House bill, it is intended that if the payments in 1993 through 1997 are treated as relating to 1998, these payments are nevertheless to be translated at the relevant rates for 1993 through 1997. Although the bill provides a rule for the translation of the taxes in this case, no change is intended as to the application of present law accounting rules determining the year for which the taxes are eligible for credit or deduction for U.S. income tax purposes.

Translation of all other foreign taxes

Foreign taxes not eligible for application of the preceding rules generally are translated into U.S. dollars using the exchange rates as of the time such taxes are paid. The House bill grants the Secretary of the Treasury authority to issue regulations that would allow foreign tax payments made by a foreign corporation or by a foreign branch of a U.S. person to be translated into U.S. dollar amounts using an average U.S. dollar exchange rate for a specified period. It is anticipated that the applicable average exchange rate would be the rate as published by a qualified source of exchange rate information for the period during which the tax payments were made.

[6] See, e.g., Rev. Rul. 84-125, 1984-2 C.B. 125.

Redetermination of foreign taxes

As revised by the House bill, section 905(c) requires foreign tax redeterminations to occur in three cases: (1) if accrued taxes when paid (in foreign currency) differ from the amounts claimed (in foreign currency) as credits by the taxpayer, (2) if accrued taxes are not paid before the date two years after the close of the taxable year to which such taxes relate, and (3) if any tax paid is refunded in whole or in part. Thus, for example, the House bill provides that if at the close of the second taxable year after the close of the accrual year any tax so accrued has not yet been paid, a foreign tax redetermination under section 905(c) is required for the amount of such unpaid tax. That is, the accrual of any tax that is unpaid as of that date would be retroactively denied. In cases where a redetermination is required, as under present law, the House bill specifies that the taxpayer must notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.

The House bill provides that in the case of accrued taxes not paid within the date two years after the close of the taxable year to which such taxes relate, whether or not such taxes were previously accrued, any such taxes if subsequently paid are taken into account for the taxable year in which paid, and no redetermination with respect to the original year of accrual is required on account of such payment. In such a case, those taxes would be translated into U.S. dollar amounts using the exchange rates in effect for the period during which such taxes are paid. Nothing in the House bill is intended to change present law as to the length of time after the year to which the redetermination relates within which redeterminations may be made or required.[7]

Effective date.—Effective for taxes paid (in the case of taxpayers using the cash basis for determining the foreign tax credit) or accrued (in the case of taxpayers using the accrual basis for determining the foreign tax credit) in taxable years beginning after December 31, 1991.

With respect to taxes of an accrual-basis taxpayer that relate to a taxable year beginning before January 1, 1992, the return for which (if one were due) would not yet be due on date of enactment (taking into account extensions of time to file), the House bill contemplates that the Secretary would, in appropriate circumstances, provide taxpayers with a reasonable average-rate method for translating such taxes that are not paid until after the effective date of the Act.

Senate Amendment

The Senate amendment is the same as the House bill, except for the effective date.

Effective date.—Effective for taxes paid (in the case of taxpayers using the cash basis for determining the foreign tax credit) or accrued (in the case of taxpayers using the accrual basis for determining the foreign tax credit) in taxable years beginning after December 31, 1991.

---

[7] *See* sec. 6501(c)(5). *See also, e.g., Pacific Metals Corp. v. Commissioner*, 1 T.C. 1028 (1943); *Texas Co. (Caribbean) Ltd. v. Commissioner*, 12 T.C. 925 (1949).

The Senate amendment's changes to the foreign tax redetermination rules apply to taxes which relate to taxable years beginning after December 31, 1991. Thus, for example, the redetermination rules under the Senate amendment do not apply to a foreign tax that relates to a taxable year beginning in or before 1991, even though it does not properly accrue until a taxable year beginning after December 31, 1991.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Foreign tax credit limitation under the alternative minimum tax

PRESENT LAW

Computing foreign tax credit limitations requires the allocation and apportionment of deductions between items of foreign source and U.S. source income. Foreign tax credit limitations must be computed both for regular tax purposes and for purposes of the alternative minimum tax (AMT). Consequently, after allocating and apportioning deductions for regular tax foreign tax credit limitation purposes, additional allocations and apportionments generally must be performed in order to compute the AMT foreign tax credit limitation.

HOUSE BILL

The House bill permits taxpayers to elect to use as their AMT foreign tax credit limitation fraction the ratio of foreign source *regular* taxable income to entire alternative minimum taxable income, rather than the ratio of foreign source *alternative minimum* taxable income to entire alternative minimum taxable income. Foreign source regular taxable income may be used, however, only to the extent it does not exceed entire alternative minimum taxable income. In the event that foreign source regular taxable income does exceed entire alternative minimum taxable income, and the taxpayer has income in more than one foreign tax credit limitation category, the committee intends that the foreign source taxable income in each such category generally shall be reduced by a pro rata portion of that excess.

The election under the House bill is available only in the first taxable year beginning after December 31, 1992, for which the taxpayer claims an AMT foreign tax credit. A taxpayer will be treated, for this purpose, as claiming an AMT foreign tax credit for any taxable year for which the taxpayer chooses to have the benefits of the foreign tax credit, and in which the taxpayer is subject to the alternative minimum tax or would be subject to the alternative minimum tax but for the availability of the AMT foreign tax credit. The election applies to all subsequent taxable years, and may be revoked only with the permission of the Secretary of the Treasury.

Effective date.—The provision applies to taxable years beginning after December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

5. Inbound and outbound transfers

PRESENT LAW

Outbound transfers

Corporate nonrecognition provisions

Certain types of exchanges relating to the organization, reorganization, and liquidation of a corporation can be made without recognition of gain to the corporation involved or to its shareholders. In 1932 Congress enacted an exception to the nonrecognition rules, which became section 367 of the 1954 Code, for the case where such an exchange involves a foreign corporation. The legislative history indicates that the exception was enacted in order to prevent tax avoidance that might have otherwise occurred upon the transfer of appreciated property outside U.S. tax jurisdiction.[1] Under that provision, in determining the extent to which gain (but not loss) was recognized in these exchanges, a foreign corporation was not considered a corporation unless it was established to the satisfaction of the IRS that the exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

The Code now provides that if a U.S. person transfers property to a foreign corporation in connection with certain corporate organizations, reorganizations, or liquidations, the foreign corporation will not, for purposes of determining the extent to which gain is recognized on such transfer, be considered to be a corporation (sec. 367(a)(1)). Various exceptions to the operation of this rule are provided, including a broad grant of authority to provide exceptions by regulation. The statutory language has changed substantially since 1932, but it has retained in large part its primary operative result—that of treating a foreign corporation as not a corporation. Since corporate status is essential to qualify for the tax-free organization, reorganization, and liquidation provisions, failure to satisfy the requirements of section 367 could result in the recognition of gain to the participant corporations and shareholders.

Excise tax on transfers to a foreign entity

At the same time that Congress enacted the original predecessor of current section 367, Congress also enacted an excise tax on outbound transfers that might not constitute income tax recognition events even after imposition of the anti-avoidance income tax rule adopted for corporate transactions. As in the case of the corporate nonrecognition override provision, the purpose of the excise

[1] H.R. Rep. No. 708, 72d Cong., 1st Sess. 20 (1932).

tax was to check transfers of property in which there was a large appreciation in value to foreign entities for the purpose of avoidance of taxes on capital gains.[2] Therefore, as in the case of the corporate provision, the excise tax generally has been imposed only in certain cases where it has been believed necessary or appropriate to preserve U.S. tax on appreciated assets.

Under present law, the excise tax generally applies on transfers of property by a U.S. person to a foreign corporation—as paid-in surplus or as a contribution to capital—or to a foreign estate, trust, or partnership.[3] The tax is 35 percent of the amount of gain inherent in the property transferred, but not recognized for income tax purposes at the time of the transfer (sec. 1491). For income tax purposes, the basis of the property whose appreciation and transfer triggers the tax is not increased to account for imposition of the tax.

The excise tax does not apply in certain cases where the transferee is exempt from U.S. tax under Code sections 501-505 (sec. 1492(1)). In addition, the excise tax does not apply in some cases where income tax rules governing outbound transfers apply, either by their terms or by the election of the taxpayer. Thus, the excise tax does not apply to a transfer described in section 367, or to a transfer not described in section 367 but with respect to which the taxpayer elects (before the transfer) the application of principles similar to the principles of section 367 (sec. 1492(2)).

In addition, a taxpayer may elect (under regulations prescribed by the Secretary) to treat a transfer described in section 1491 as a sale or exchange of the property transferred and to recognize as gain (but not loss) in the year of the transfer the excess of the fair market value of the property transferred over the adjusted basis (for determining gain) of the property in the hands of the transferor (sec. 1057; Treas. Reg. sec. 7.0). To the extent that gain is recognized pursuant to the election in the year of the transfer, the transfer is not subject to the excise tax, and the basis of the property in the hands of the transferee will be increased by the amount of gain received (sec. 1492(3)). The legislative history of the elective income recognition provision indicates that the making of an election which has as one of its principle purposes the avoidance of Federal income taxes is not permitted.[4]

The excise tax is due at the time of the transfer (sec. 1494(a)). Under regulations, the excise tax may be abated, remitted, or refunded if the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367 (sec. 1494(b)).

Inbound corporate transfers

Although the legislative history of the 1932 Act indicated a concern with outbound transfers, the statutory standard for deter-

---

[2] *Id.* at 52.

[3] The Internal Revenue Service has in the past wavered on the question whether this tax applies to a transfer to a foreign trust with respect to which the transferor is treated as the owner under the grantor trust rules. Compare Rev. Rul. 69-450, 1969-2 C.B. 168 (holding that such a transfer is subject to tax under section 1491); with Rev. Rul. 87-61, 1987-2 C.B. 219 (revoking Rev. Rul. 69-450, and holding that such a transfer is *not* subject to tax under section 1491).

[4] Staff of the Joint Committee on Taxation, 94th Cong., 2d Sess., *General Explanation of the Tax Reform Act of 1976*, at 226 (1976).

mining that a transaction did not have as one of its principal purposes tax avoidance evolved through administrative interpretation into a requirement that, in the case of transfers into the United States by a foreign corporation, tax-free treatment generally would be permitted only if the U.S. tax on accumulated earnings and profits was paid. For example, in 1968, the IRS issued guidelines (Rev. Proc. 68-23, 1968-1 C.B. 821) as to when favorable rulings "ordinarily" would be issued. As a condition of obtaining a favorable ruling with respect to certain transactions, the section 367 guidelines required the taxpayer to agree to include certain items in income (the amount to be included was called the section 367 toll charge). For example, if the transaction involved the liquidation of a foreign corporation into a domestic parent corporation, a favorable ruling was issued if the domestic parent agreed to include in its income as a dividend for the taxable year in which the liquidation occurred the portion of the accumulated earnings and profits of the foreign corporation which were properly attributable to the domestic corporation's stock interest in the foreign corporation (Rev. Proc. 68-23, sec. 3.01(1); see also sec. 3.03(1)(b)).

Absence of a toll charge on accumulated earnings of a foreign corporation upon liquidation or asset reorganization into a U.S. corporation clearly would permit avoidance of tax. For example, if a U.S. corporation owns 100 percent of the stock of a U.S. subsidiary, no tax is imposed either on a dividend from the subsidiary to the parent (sec. 243) or the liquidation of the subsidiary into the parent (secs. 332 and 337). In each case, the earnings of the subsidiary already have been subject to U.S. tax jurisdiction, and the liquidation provisions allow nonrecognition of gain inherent in appreciated property of the subsidiary. On the other hand, if a U.S. corporation owns 100 percent of the stock of a foreign subsidiary, earnings of the subsidiary generally are not subject to current U.S. tax. Instead, tax generally is imposed on a dividend from the subsidiary to the parent, net of creditable foreign taxes. If a liquidation of the subsidiary could be accomplished tax-free under the Code, U.S. tax on its earnings would be avoided; more generally, the parent would be able to succeed to the basis and other tax attributes of the foreign corporation without having subjected to U.S. tax jurisdiction the earnings that gave rise to those tax attributes.

Outbound transfers since the Tax Reform Act of 1976

For purposes of the transactions described above, section 367 (and its predecessors) remained largely unchanged between 1932 and 1976. In 1976, however, a number of problems caused Congress to revise section 367. One result of the 1976 revision was to separate the provision into 2 sets of rules: one set dealing with outbound transfers, where the statutory aim is to prevent the removal of appreciated assets or inventory from U.S. tax jurisdiction prior to their sale (sec. 367(a)), and the other set dealing with both transfers into the United States and those which are exclusively foreign (sec. 367(b)).

Section 367(b) now provides, in part, that in the case of certain exchanges in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation will be considered to be a corporation except to the extent provided in regula-

tions which are necessary or appropriate to prevent the avoidance of Federal income taxes.

Although it is clear that absence of a toll charge on accumulated earnings of a foreign corporation upon liquidation or reorganization into a U.S. corporation leads to avoidance of tax, and Congress in 1976 noted without disapproval the adoption of IRS positions that would prevent the avoidance of tax in these cases,[5] neither section 367(b) as revised in 1976, nor its predecessors, were drafted in such a way that directly causes tax to be imposed on foreign earnings.

For example, assume that a U.S. corporation owns 100 percent of the stock of a liquidating foreign corporation, and, pursuant to regulations under section 367(b), the foreign corporation is not treated as a corporation for purposes of section 332. In that case, the U.S. corporation would be required under the Code to recognize the difference between the basis and the value of its stock in the foreign corporation. That gain, however, may be more or less than the accumulated earnings of the foreign corporation attributable to the period when the U.S. corporation owned the stock of the foreign corporation.

Perhaps as a result, neither the present temporary regulations nor the recently proposed regulations under section 367(b) mandate a tax based on the accumulated earnings of a foreign corporation that liquidates or reorganizes into a U.S. corporation. The temporary regulations allow the taxpayer to elect treatment of the foreign corporation as a corporation if the tax on earnings is paid. If the taxpayer chooses not to make the election, the foreign corporation is not treated as a corporation under the relevant nonrecognition provision (e.g., sec. 332, 354), but *is* treated as a corporation for other purposes, such as for purposes of the basis rules (secs. 334, 358, 362), and carryover provisions (sec. 381) (Temp. Treas. Reg. secs. 7.367(b)-5(b) and 7.367(b)-7(c)(2)). The proposed regulations generally require that the foreign corporation be treated as a corporation, and permit the taxpayer to elect either to pay the tax on earnings, or to pay tax on the gain; but if the latter option is chosen, adjustments must be made to either net operating loss carryovers, capital loss carryovers, or asset bases (Proposed Treas. Reg. sec. 1.367(b)-3(b)(2)).

House Bill

Outbound transfers

The House bill repeals the excise tax on outbound transfers. In its place, the bill requires the full recognition of gain on a transfer of property by a U.S. person to a foreign corporation as paid-in surplus, or as a contribution to capital, or to a foreign estate, trust, or partnership. The Secretary may, however, in lieu of applying this full recognition rule, provide regulations under which principles similar to the principles of section 367 shall apply to any such transfer. Moreover, the Secretary may provide rules under which recognition of gain will not be triggered by section 1491 in cases

[5] E.g., Staff of the Joint Comm. on Taxation, 94th Cong., 2d Sess., *General Explanation of the Tax Reform Act of 1976*, at 264 (1976).

where the Secretary is satisfied that application of other Code rules (such as those relating to partnerships or trusts) will prevent the avoidance of tax consistent with the purposes of the bill. Full recognition of gain can also be avoided in the case of a transfer described in section 367.

Inbound transfers

The House bill provides that in the case of certain corporate organizations, reorganizations, and liquidations described in section 332, 351, 354, 355, 356, or 361 in which the status of a foreign corporation as a corporation is a condition for nonrecognition by a party to the transaction, income shall be recognized to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. This provision is limited in its application, under the bill, so as not to apply to a transaction in which the foreign corporation is not treated as a corporation under section 367(a)(1). Thus, the bill permits the IRS to provide by regulations for recognition of income, without regard to the amount of gain that would be recognized in the absence of the relevant nonrecognition provision listed above. As under current law, such regulations will be subject to normal court review as to whether they are necessary or appropriate for the prevention of avoidance of Federal income taxes.

In addition, the bill clarifies that rules for income recognition under section 367(b) may also be applied in a case involving a transfer literally described in section 367(a)(1), where necessary or appropriate to prevent the avoidance of Federal income taxes.[6]

Effective date

The provision that amends the outbound rules and repeals the excise tax applies to transfers after date of enactment. The provision that amends section 367(b) applies to transfers after December 31, 1993.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. With regard to the provision on outbound transfers, the conferees anticipate that prior to the promulgation of regulations, the Secretary generally will continue to permit taxpayers to elect the application of principles similar to the principles of section 367, provided the election is made by the time for filing the income tax return for the taxable year of the transfer. By converting the excise tax to a recognition rule for income tax purposes, the conferees do not intend to affect the outcome of the question, should the Internal Revenue Service choose to revisit it, of whether tax may be incurred upon a transfer of appreciated property to a foreign trust with respect to which the transferor is treated as the owner under the grantor trust rules.

---

[6] See Temp. Treas. Reg. sec. 7.367(b)-4(b); Proposed Treas. Reg. sec. 1.367(a)-3(a).

E. Treatment of Intangibles

1. Amortization of Goodwill and Certain Other Intangibles

Present Law

In determining taxable income for Federal income tax purposes, a taxpayer is allowed depreciation or amortization deductions for the cost or other basis of intangible property that is used in a trade or business or held for the production of income if the property has a limited useful life that may be determined with reasonable accuracy. No depreciation or amortization deductions are allowed with respect to goodwill or going concern value.

House Bill

In general

The bill allows an amortization deduction with respect to the capitalized costs of certain intangible property (defined as a "section 197 intangible") that is acquired by a taxpayer and that is held by the taxpayer in connection with the conduct of a trade or business or an activity engaged in for the production of income. The amount of the deduction is determined by amortizing the adjusted basis (for purposes of determining gain) of the intangible ratably over a 14-year period that begins with the month that the intangible is acquired.[1] No other depreciation or amortization deduction is allowed with respect to a section 197 intangible that is acquired by a taxpayer.

In general, the bill applies to a section 197 intangible acquired by a taxpayer regardless of whether it is acquired as part of a trade or business. In addition, the bill generally applies to a section 197 intangible that is treated as acquired under section 338 of the Code. The bill generally does not apply to a section 197 intangible that is created by the taxpayer if the intangible is not created in connection with a transaction (or series of related transactions) that involves the acquisition of a trade or business or a substantial portion thereof.

Except in the case of amounts paid or incurred under certain covenants not to compete (or under certain other arrangements that have substantially the same effect as covenants not to compete) and certain amounts paid or incurred on account of the transfer of a franchise, trademark, or trade name, the bill generally does not apply to any amount that is otherwise currently deductible (i.e., not capitalized) under present law.

No inference is intended as to whether a depreciation or amortization deduction is allowed under present law with respect to any intangible property that is either included in, or excluded from, the definition of a section 197 intangible. In addition, no inference is intended as to whether an asset is to be considered tangible or intangible property for any other purpose of the Internal Revenue Code.

---

[1] In the case of a short taxable year, the amortization deduction is to be based on the number of months in such taxable year.

Definition of section 197 intangible

In general

The term "section 197 intangible" is defined as any property that is included in any one or more of the following categories: (1) goodwill and going concern value; (2) certain specified types of intangible property that generally relate to workforce, information base, know-how, customers, suppliers, or other similar items; (3) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof; (4) any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof); and (5) any franchise, trademark, or trade name.

Certain types of property, however, are specifically excluded from the definition of the term "section 197 intangible." The term "section 197 intangible" does not include: (1) any interest in a corporation, partnership, trust, or estate; (2) any interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract; (3) any interest in land; (4) certain computer software; (5) certain interests in films, sound recordings, video tapes, books, or other similar property; (6) certain rights to receive tangible property or services; (7) certain interests in patents or copyrights; (8) any interest under an existing lease of tangible property; (9) any interest under an existing indebtedness (except for the deposit base and similar items of a financial institution); and (10) a franchise to engage in any professional sport, and any item acquired in connection with such a franchise.

In addition, the Treasury Department is authorized to issue regulations that exclude certain rights of fixed duration or amount from the definition of a section 197 intangible.

Goodwill and going concern value

For purposes of the bill, goodwill is the value of a trade or business that is attributable to the expectancy of continued customer patronage, whether due to the name of a trade or business, the reputation of a trade or business, or any other factor.

In addition, for purposes of the bill, going concern value is the additional element of value of a trade or business that attaches to property by reason of its existence as an integral part of a going concern. Going concern value includes the value that is attributable to the ability of a trade or business to continue to function and generate income without interruption notwithstanding a change in ownership. Going concern value also includes the value that is attributable to the use or availability of an acquired trade or business (for example, the net earnings that otherwise would not be received during any period were the acquired trade or business not available or operational).

Workforce, information base, know-how, customer-based intangibles, supplier-based intangibles and other similar items

Workforce.—The term "section 197 intangible" includes workforce in place (which is sometimes referred to as agency force or assembled workforce), the composition of a workforce (for example, the experience, education, or training of a workforce), the terms and conditions of employment whether contractual or otherwise, and any other value placed on employees or any of their attributes. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of a highly-skilled workforce is to be amortized over the 14-year period specified in the bill. As a further example, the cost of acquiring an existing employment contract (or contracts) or a relationship with employees or consultants (including but not limited to any "key employee" contract or relationship) as part of the acquisition of a trade or business is to be amortized over the 14-year period specified in the bill.

Information base.—The term "section 197 intangible" includes business books and records, operating systems, and any other information base including lists or other information with respect to current or prospective customers (regardless of the method of recording such information). Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the intangible value of technical manuals, training manuals or programs, data files, and accounting or inventory control systems is to be amortized over the 14-year period specified in the bill. As a further example, the cost of acquiring customer lists, subscription lists, insurance expirations,[2] patient or client files, or lists of newspaper, magazine, radio or television advertisers is to be amortized over the 14-year period specified in the bill.

Know-how.—The term "section 197 intangible" includes any patent, copyright, formula, process, design, pattern, know-how, format, or other similar item. For this purpose, the term "section 197 intangible" is to include package designs, computer software, and any interest in a film, sound recording, video tape, book, or other similar property, except as specifically provided otherwise in the bill.[3]

Customer-based intangibles.—The term "section 197 intangible" includes any customer-based intangible, which is defined as the composition of market, market share, and any other value resulting from the future provision of goods or services pursuant to relationships with customers (contractual or otherwise) in the ordinary course of business. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of customer base, circulation base, undeveloped market or market growth, insurance in force, mortgage servicing contracts, investment management contracts, or other rela-

---

[2] Insurance expirations are records that are maintained by insurance agents with respect to insurance customers. These records generally include information relating to the type of insurance, the amount of insurance, and the expiration date of the insurance.

[3] See below for a description of the exceptions for certain patents, certain computer software, and certain interests in films, sound recordings, video tapes, books, or other similar property.

tionships with customers that involve the future provision of goods or services, is to be amortized over the 14-year period specified in the bill. On the other hand, the portion (if any) of the purchase price of an acquired trade or business that is attributable to accounts receivable or other similar rights to income for those goods or services that have been provided to customers prior to the acquisition of a trade or business is not to be taken into account under the bill.[4]

In addition, the bill specifically provides that the term "customer-based intangible" includes the deposit base and any similar asset of a financial institution. Thus, for example, the portion (if any) of the purchase price of an acquired financial institution that is attributable to the checking accounts, savings accounts, escrow accounts and other similar items of the financial institution is to be amortized over the 14-year period specified in the bill.

Supplier-based intangibles.—The term "section 197 intangible" includes any supplier-based intangible, which is defined as the value resulting from the future acquisition of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of a favorable relationship with persons that provide distribution services (for example, favorable shelf or display space at a retail outlet), the existence of a favorable credit rating, or the existence of favorable supply contracts, is to be amortized over the 14-year period specified in the bill.[5]

Other similar items.—The term "section 197 intangible" also includes any other intangible property that is similar to workforce, information base, know-how, customer-based intangibles, or supplier-based intangibles.

Licenses, permits, and other rights granted by governmental units

The term "section 197 intangible" also includes any license, permit, or other right granted by a governmental unit or any agency or instrumentality thereof (even if the right is granted for an indefinite period or the right is reasonably expected to be renewed for an indefinite period).[6] Thus, for example, the capitalized cost of acquiring from any person a liquor license, a taxi-cab medallion (or license), an airport landing or takeoff right (which is sometimes referred to as a slot), a regulated airline route, or a television or radio broadcasting license is to be amortized over the 14-year period specified in the bill. For purposes of the bill, the issuance or renewal of a license, permit, or other right granted by a govern-

---

[4] As under present law, the portion of the purchase price of an acquired trade or business that is attributable to accounts receivable is to be allocated among such receivables and is to be taken into account as payment is received under each receivable or at the time that a receivable becomes worthless.

[5] See below, however, for a description of the exception for certain rights to receive tangible property or services from another person.

[6] A right granted by a governmental unit or an agency or instrumentality thereof that constitutes an interest in land or an interest under a lease of tangible property is excluded from the definition of a section 197 intangible. See below for a description of the exceptions for interests in land and for interests under leases of tangible property.

mental unit or an agency or instrumentality thereof is to be considered an acquisition of such license, permit, or other right.

Covenants not to compete and other similar arrangements

The term "section 197 intangible" also includes any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete; hereafter "other similar arrangement") entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof). For this purpose, an interest in a trade or business includes not only the assets of a trade or business, but also stock in a corporation that is engaged in a trade or business or an interest in a partnership that is engaged in a trade or business.

Any amount that is paid or incurred under a covenant not to compete (or other similar arrangement) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof) is chargeable to capital account and is to be amortized ratably over the 14-year period specified in the bill. In addition, any amount that is paid or incurred under a covenant not to compete (or other similar arrangement) after the taxable year in which the covenant (or other similar arrangement) was entered into is to be amortized ratably over the remaining months in the 14-year amortization period that applies to the covenant (or other similar arrangement) as of the beginning of the month that the amount is paid or incurred.

For purposes of this provision, an arrangement that requires the former owner of an interest in a trade or business to continue to perform services (or to provide property or the use of property) that benefit the trade or business is considered to have substantially the same effect as a covenant not to compete to the extent that the amount paid to the former owner under the arrangement exceeds the amount that represents reasonable compensation for the services actually rendered (or for the property or use of property actually provided) by the former owner. As under present law, to the extent that the amount paid or incurred under a covenant not to compete (or other similar arrangement) represents additional consideration for the acquisition of stock in a corporation, such amount is not to be taken into account under this provision but, instead, is to be included as part of the acquirer's basis in the stock.

Franchises, trademarks, and trade names

The term "section 197 intangible" also includes any franchise, trademark, or trade name. For this purpose, the term "franchise" is defined, as under present law, to include any agreement that provides one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.[7] In addition, as provided under present law, the renewal of a

---

[7] Section 1253(b)(1) of the Code.

franchise, trademark, or trade name is to be treated as an acquisition of such franchise, trademark, or trade name.[8]

The bill continues the present-law treatment of certain contingent amounts that are paid or incurred on account of the transfer of a franchise, trademark, or trade name. Under these rules, a deduction is allowed for amounts that are contingent on the productivity, use, or disposition of a franchise, trademark, or trade name only if (1) the contingent amounts are paid as part of a series of payments that are payable at least annually throughout the term of the transfer agreement, and (2) the payments are substantially equal in amount or payable under a fixed formula.[9] Any other amount, whether fixed or contingent, that is paid or incurred on account of the transfer of a franchise, trademark, or trade name is chargeable to capital account and is to be amortized ratably over the 14-year period specified in the bill.

Exceptions to the definition of a section 197 intangible

In general.—The bill contains several exceptions to the definition of the term "section 197 intangible." Several of the exceptions contained in the bill apply only if the intangible property is not acquired in a transaction (or series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business. It is anticipated that the Treasury Department will exercise its regulatory authority to require any intangible property that would otherwise be excluded from the definition of the term "section 197 intangible" to be taken into account under the bill under circumstances where the acquisition of the intangible property is, in and of itself, the acquisition of an asset which constitutes a trade or business or a substantial portion of a trade or business.

The determination of whether acquired assets constitute a substantial portion of a trade or business is to be based on all of the facts and circumstances, including the nature and the amount of the assets acquired as well as the nature and amount of the assets retained by the transferor. It is not intended, however, that the value of the assets acquired relative to the value of the assets retained by the transferor is determinative of whether the acquired assets constitute a substantial portion of a trade or business.

For purposes of the bill, a group of assets is to constitute a trade or business if the use of such assets would constitute a trade or business for purposes of section 1060 of the Code (i.e., if the assets are of such a character that goodwill or going concern value could under any circumstances attach to the assets). In addition, the acquisition of a franchise, trademark or trade name is to constitute the acquisition of a trade or business or a substantial portion of a trade or business.

In determining whether a taxpayer has acquired an intangible asset in a transaction (or series of related transactions) that in-

[8] Only the costs incurred in connection with the renewal, however, are to be amortized over the 14-year period that begins with the month that the franchise, trademark, or trade name is renewed. Any costs incurred in connection with the issuance (or an earlier renewal) of a franchise, trademark, or trade name are to continue to be taken into account over the remaining portion of the amortization period that began at the time of such issuance (or earlier renewal).

[9] Section 1253(d)(1) of the Code.

volves the acquisition of assets that constitute a trade or business or a substantial portion of a trade or business, only those assets acquired in a transaction (or a series of related transactions) by a taxpayer (and persons related to the taxpayer) from the same person (and any related person) are to be taken into account. In addition, any employee relationships that continue (or covenants not to compete that are entered into) as part of the transfer of assets are to be taken into account in determining whether the transferred assets constitute a trade or business or a substantial portion of a trade or business.

Interests in a corporation, partnership, trust, or estate.—The term "section 197 intangible" does not include any interest in a corporation, partnership, trust, or estate. Thus, for example, the bill does not apply to the cost of acquiring stock, partnership interests, or interests in a trust or estate, whether or not such interests are regularly traded on an established market.[10]

Interests under certain financial contracts.—The term "section 197 intangible" does not include any interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract, whether or not such interest is regularly traded on an established market. Any interest under a mortgage servicing contract, credit card servicing contract or other contract to service indebtedness issued by another person, and any interest under an assumption reinsurance contract [11] is not excluded from the definition of the term "section 197 intangible" by reason of the exception for interests under certain financial contracts.

Interests in land.—The term "section 197 intangible" does not include any interest in land. Thus, the cost of acquiring an interest in land is to be taken into account under present law rather than under the bill. For this purpose, an interest in land includes a fee interest, life estate, remainder, easement, mineral rights, timber rights, grazing rights, riparian rights, air rights, zoning variances, and any other similar rights with respect to land. An interest in land is not to include an airport landing or takeoff right, a regulated airline route, or a franchise to provide cable television services.

Certain computer software.—The term "section 197 intangible" does not include computer software (whether acquired as part of a trade or business or otherwise) that (1) is readily available for purchase by the general public; (2) is subject to a non-exclusive license; and (3) has not been substantially modified. In addition, the term "section 197 intangible" does not include computer software which is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

For purposes of the bill, the term "computer software" is defined as any program (i.e., any sequence of machine-readable code) that is designed to cause a computer to perform a desired function. The term "computer software" includes any incidental and ancil-

---

[10] A temporal interest in property, outright or in trust, may not be used to convert a section 197 intangible into property that is amortizable more rapidly than ratably over the 14-year period specified in the bill.

[11] See below for a description of the treatment of assumption reinsurance contracts.

lary rights with respect to computer software that (1) are necessary to effect the legal acquisition of the title to, and the ownership of, the computer software, and (2) are used only in connection with the computer software. The term "computer software" does not include any data base or similar item (other than a data base or item that is in the public domain and that is incidental to the software) [12] regardless of the form in which it is maintained or stored.

If a depreciation deduction is allowed with respect to any computer software that is not a section 197 intangible, the amount of the deduction is to be determined by amortizing the adjusted basis of the computer software ratably over a 36-month period that begins with the month that the computer software is placed in service. For this purpose, the cost of any computer software that is taken into account as part of the cost of computer hardware or other tangible property under present law is to continue to be taken into account in such manner under the bill. In addition, the cost of any computer software that is currently deductible (*i.e.*, not capitalized) under present law is to continue to be taken into account in such manner under the bill.

Certain interests in films, sound recordings, video tapes, books, or other similar property.—The term "section 197 intangible" does not include any interest (including an interest as a licensee) in a film, sound recording, video tape, book, or other similar property (including the right to broadcast or transmit a live event) if the interest is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

Certain rights to receive tangible property or services.—The term "section 197 intangible" does not include any right to receive tangible property or services under a contract (or any right to receive tangible property or services granted by a governmental unit or an agency or instrumentality thereof) if the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

If a depreciation deduction is allowed with respect to a right to receive tangible property or services that is not a section 197 intangible, the amount of the deduction is to be determined in accordance with regulations to be promulgated by the Treasury Department. It is anticipated that the regulations may provide that in the case of an amortizable right to receive tangible property or services in substantially equal amounts over a fixed period that is not renewable, the cost of acquiring the right will be taken into account ratably over such fixed period. It is also anticipated that the regulations may provide that in the case of a right to receive a fixed amount of tangible property or services over an unspecified period, the cost of acquiring such right will be taken into account under a method that allows a deduction based on the amount of tangible property or services received during a taxable year compared to the total amount of tangible property or services to be received.

[12] For example, a data base would not include a dictionary feature used to spell-check a word processing program.

For example, assume that a taxpayer acquires from another person a favorable contract right of such person to receive a specified amount of raw materials each month for the next three years (which is the remaining life of the contract) and that the right to receive such raw materials is not acquired as part of the acquisition of assets that constitute a trade or business or a substantial portion thereof (i.e., such contract right is not a section 197 intangible). It is anticipated that the taxpayer may be required to amortize the cost of acquiring the contract right ratably over the three-year remaining life of the contract. Alternatively, if the favorable contract right is to receive a specified amount of raw materials during an unspecified period, it is anticipated that the taxpayer may be required to amortize the cost of acquiring the contract right by multiplying such cost by a fraction, the numerator of which is the amount of raw materials received under the contract during any taxable year and the denominator of which is the total amount of raw materials to be received under the contract.

It is also anticipated that the regulations may require a taxpayer under appropriate circumstances to amortize the cost of acquiring a renewable right to receive tangible property or services over a period that includes all renewal options exercisable by the taxpayer at less than fair market value.

Certain interests in patents or copyrights.—The term "section 197 intangible" does not include any interest in a patent or copyright which is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

If a depreciation deduction is allowed with respect to an interest in a patent or copyright and the interest is not a section 197 intangible, then the amount of the deduction is to be determined in accordance with regulations to be promulgated by the Treasury Department. It is expected that the regulations may provide that if the purchase price of a patent is payable on an annual basis as a fixed percentage of the revenue derived from the use of the patent, then the amount of the depreciation deduction allowed for any taxable year with respect to the patent equals the amount of the royalty paid or incurred during such year.[13]

Interests under leases of tangible property.—The term "section 197 intangible" does not include any interest as a lessor or lessee under an existing lease of tangible property (whether real or personal).[14] The cost of acquiring an interest as a lessor under a lease of tangible property where the interest as lessor is acquired in connection with the acquisition of the tangible property is to be taken into account as part of the cost of the tangible property. For example, if a taxpayer acquires a shopping center that is leased to tenants operating retail stores, the portion (if any) of the purchase price of the shopping center that is attributable to the favorable attributes of the leases is to be taken into account as a part of the

[13] See *Associated Patentees, Inc.*, 4 T.C. 979 (1945); and Rev. Rul. 67-136, 1967-1 C.B. 58.

[14] The bill provides that a sublease is to be treated in the same manner as a lease of the underlying property. Thus, the term "section 197 intangible" does not include any interest as a sublessor or sublessee of tangible property.

basis of the shopping center and is to be taken into account in determining the depreciation deduction allowed with respect to the shopping center.

The cost of acquiring an interest as a lessee under an existing lease of tangible property is to be taken into account under present law (see section 178 of the Code and Treas. Reg. sec. 1.162-11(a)) rather than under the provisions of the bill.[15] In the case of any interest as a lessee under a lease of tangible property that is acquired with any other intangible property (either in the same transaction or series of related transactions), however, the portion of the total purchase price that is allocable to the interest as a lessee is not to exceed the excess of (1) the present value of the fair market value rent for the use of the tangible property for the term of the lease,[16] over (2) the present value of the rent reasonably expected to be paid for the use of the tangible property for the term of the lease.

Interests under indebtedness.—The term "section 197 intangible" does not include any interest (whether as a creditor or debtor) under any indebtedness that was in existence on the date that the interest was acquired.[17] Thus, for example, the value of assuming an existing indebtedness with a below-market interest rate is to be taken into account under present law rather than under the bill. In addition, the premium paid for acquiring the right to receive an above-market rate of interest under a debt instrument may be taken into account under section 171 of the Code, which generally allows the amount of the premium to be amortized on a yield-to-maturity basis over the remaining term of the debt instrument. This exception for interests under existing indebtedness does not apply to the deposit base and other similar items of a financial institution.

Professional sports franchises.—The term "section 197 intangible" does not include a franchise to engage in professional baseball, basketball, football, or other professional sport, and any item acquired in connection with such a franchise. Consequently, the cost of acquiring a professional sports franchise and related assets (including any goodwill, going concern value, or other section 197 intangibles) is to be allocated among the assets acquired as provided under present law (see, for example, section 1056 of the Code) and is to be taken into account under the provisions of present law.

Regulatory authority regarding rights of fixed term or duration.— The bill authorizes the Treasury Department to issue regulations that exclude a right received under a contract, or granted by a governmental unit or an agency or instrumentality thereof, from the definition of a section 197 intangible if (1) the right is not

---

[15] The lease of a gate at an airport for the purpose of loading and unloading passengers and cargo is a lease of tangible property for this purpose. It is anticipated that such treatment will serve as guidance to the Internal Revenue Service and taxpayers in resolving existing disputes.

[16] In no event is the present value of the fair market value rent for the use of the tangible property for the term of the lease to exceed the fair market value of the tangible property as of the date of acquisition. The present value of such rent is presumed to be less than the value of the tangible property if the duration of the lease is less than the economic useful life of the property.

[17] For purposes of this exception, the term "interest under any existing indebtedness" is to include mortgage servicing rights to the extent that the rights are stripped coupons under section 1286 of the Code. See Rev. Rul. 91-46, 1991-34 I.R.B. 5 (August 26, 1991).

acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof) and (2) the right either (A) has a fixed duration or (B) is fixed as to amount [18] and properly amortizable (without regard to this provision) under a method similar to the unit of production method. Generally, it is anticipated that the mere fact that a taxpayer will have the opportunity to renew a contract or other right on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value and in which the taxpayer is not contractually advantaged, will not be taken into account in determining the duration of such right or whether it is for a fixed amount.

For example, Company A enters into a license with Company B to use certain know-how developed by B. The license is for five years and provides that it cannot be renewed by A except on terms that are fully available to A's competitors and will reflect an arm's length price determined at the time of renewal. The license does not constitute a substantial portion of a trade or business and is not entered into as part of a transaction (or series of related transactions) that constitute the acquisition of a trade or business or substantial portion thereof. It is anticipated that in these circumstances the regulations will provide that the license is not a section 197 intangible because it is of fixed duration.

The regulations may also prescribe rules governing the extent to which renewal options and similar items will be taken into account for the purpose of determining whether rights are fixed in duration or amount.

It is also anticipated that such regulations may prescribe the appropriate method of amortizing the capitalized costs of rights which are excluded by such regulations from the definition of a section 197 intangible.

Exception for certain self-created intangibles

The bill generally does not apply to any section 197 intangible that is created by the taxpayer if the section 197 intangible is not created in connection with a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion thereof.

For purposes of this exception, a section 197 intangible that is owned by a taxpayer is to be considered created by the taxpayer if the intangible is produced for the taxpayer by another person under a contract with the taxpayer that is entered into prior to the production of the intangible. For example, a technological process or other know-how that is developed specifically for a taxpayer under an arrangement with another person pursuant to which the taxpayer retains all rights to the process or know-how is to be considered created by the taxpayer.

The exception for "self-created" intangibles does not apply to the entering into (or renewal of) a contract for the use of a section

---

[18] For example, an emission allowance granted a public utility under Title IV of the Clean Air Act Amendments of 1990 is a right that is limited in amount within the meaning of this provision, because each allowance grants a right to a fixed amount of emissions.

197 intangible. Thus, for example, the exception does not apply to the capitalized costs incurred by a licensee in connection with the entering into (or renewal of) a contract for the use of know-how or other section 197 intangible. These capitalized costs are to be amortized over the 14-year period specified in the bill.

In addition, the exception for "self-created" intangibles does not apply to: (1) any license, permit, or other right that is granted by a governmental unit or an agency or instrumentality thereof; (2) any covenant not to compete (or other similar arrangement) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof); and (3) any franchise, trademark, or trade name. Thus, for example, the capitalized costs incurred in connection with the development or registration of a trademark or trade name are to be amortized over the 14-year period specified in the bill.

Special rules

Determination of adjusted basis

The adjusted basis of a section 197 intangible that is acquired from another person generally is to be determined under the principles of present law that apply to tangible property that is acquired from another person. Thus, for example, if a portion of the cost of acquiring an amortizable section 197 intangible is contingent, the adjusted basis of the section 197 intangible is to be increased as of the beginning of the month that the contingent amount is paid or incurred. This additional amount is to be amortized ratably over the remaining months in the 14-year amortization period that applies to the intangible as of the beginning of the month that the contingent amount is paid or incurred.

Treatment of certain dispositions of amortizable section 197 intangibles

Special rules apply if a taxpayer disposes of a section 197 intangible that was acquired in a transaction or series of related transactions and, after the disposition,[19] the taxpayer retains other section 197 intangibles that were acquired in such transaction or series or related transactions.[20] First, no loss is to be recognized by reason of such a disposition. Second, the adjusted bases of the retained section 197 intangibles that were acquired in connection with such transaction or series of related transactions are to be increased by the amount of any loss that is not recognized. The adjusted basis of any such retained section 197 intangible is increased by the product of (1) the amount of the loss that is not recognized

---

[19] For this purpose, the abandonment of a section 197 intangible or any other event that renders a section 197 intangible worthless is to be considered a disposition of a section 197 intangible.

[20] These special rules do not apply to a section 197 intangible that is separately acquired (i.e., a section 197 intangible that is acquired other than in a transaction or a series of related transactions that involve the acquisition of other section 197 intangibles). Consequently, a loss may be recognized upon the disposition of a separately acquired section 197 intangible. In no event, however, is the termination or worthlessness of a portion of a section 197 intangible to be considered the disposition of a separately acquired section 197 intangible. For example, the termination of one or more customers from an acquired customer list or the worthlessness of some information from an acquired data base is not to be considered the disposition of a separately acquired section 197 intangible.

solely by reason of this provision, and (2) a fraction, the numerator of which is the adjusted basis of the intangible as of the date of the disposition and the denominator of which is the total adjusted bases of all such retained section 197 intangibles as of the date of the disposition.

For purposes of these rules, all persons treated as a single taxpayer under section 41(f)(1) of the Code are treated as a single taxpayer. Thus, for example, a loss is not to be recognized by a corporation upon the disposition of a section 197 intangible if after the disposition a member of the same controlled group as the corporation retains other section 197 intangibles that were acquired in the same transaction (or a series of related transactions) as the section 197 intangible that was disposed of. It is anticipated that the Treasury Department will provide rules for taking into account the amount of any loss that is not recognized due to this rule (for example, by allowing the corporation that disposed of the section 197 intangible to amortize the loss over the remaining portion of the 14-year amortization period).

Treatment of certain nonrecognition transactions

If any section 197 intangible is acquired in a transaction to which section 332, 351, 361, 721, 731, 1031, or 1033 of the Code applies (or any transaction between members of the same affiliated group during any taxable year for which a consolidated return is filed),[21] the transferee is to be treated as the transferor for purposes of applying this provision with respect to the amount of the adjusted basis of the transferee that does not exceed the adjusted basis of the transferor.

For example, assume that an individual owns an amortizable section 197 intangible that has been amortized under section 197 for 4 full years and has a remaining unamortized basis of $300,000. In addition, assume that the individual exchanges the asset and $100,000 for a like-kind amortizable section 197 intangible in a transaction to which section 1031 applies. Under the bill, $300,000 of the basis of the acquired amortizable section 197 intangible is to be amortized over the 10 years remaining in the original 14-year amortization period for the transferred asset and the other $100,000 of basis is to be amortized over the 14-year period specified in the bill.[22]

Treatment of certain partnership transactions

Generally, consistent with the rules described above for certain nonrecognition transactions, a transaction in which a taxpayer acquires an interest in an intangible held through a partnership (either before or after the transaction) will be treated as an acquisition to which the bill applies only if, and to the extent that, the

---

[21] The termination of a partnership under section 708(b)(1)(B) of the Code is a transaction to which this rule applies. In such a case, the bill applies only to the extent that the adjusted basis of the section 197 intangibles before the termination exceeds the adjusted basis of the section 197 intangibles after the termination. (See the example below in the discussion of "Treatment of Certain Partnership Transactions.")

[22] No inference is intended whether any asset treated as a section 197 intangible under the bill is eligible for like kind exchange treatment.

acquiring taxpayer obtains, as a result of the transaction, an increased basis for such intangible.[23]

For example, assume that A, B and C each contribute $700 for equal shares in partnership P, which on January 1, 1993, acquires as its sole asset an amortizable section 197 intangible for $2,100. Assume that on January 1, 1997, (1) the sole asset of P is the intangible acquired in 1993, (2) the intangible has an unamortized basis of $1,500 and A, B, and C each have a basis of $500 in their partnership interests, and (3) D (who is not related to A, B, or C) acquires A's interest in P for $800. Under the bill, if there is no section 754 election in effect for 1997, there will be no change in the basis or amortization of the intangible and D will merely step into the shoes of A with respect to the intangible. D's share of the basis in the intangible will be $500, which will be amortized over the 10 years remaining in the amortization period for the intangible.

On the other hand, if a section 754 election is in effect for 1997, then D will be treated as having an $800 basis for its share of P's intangible. Under section 197, D's share of income and loss will be determined as if P owns two intangible assets. D will be treated as having a basis of $500 in one asset, which will continue to be amortized over the 10 remaining years of the original 14-year life. With respect to the other asset, D will be treated as having a basis of $300 (the amount of step-up obtained by D under section 743 as a result of the section 754 election) which will be amortized over a 14-year period starting with January of 1997. B and C will each continue to share equally in a $1,000 basis in the intangible and amortize that amount over the remaining 10-year life.

As an additional example, assume the same facts as described above, except that D acquires both A's and B's interests in P for $1,600. Under section 708, the transaction is treated as if P is liquidated immediately after the transfer, with C and D each receiving their pro rata share of P's assets which they then immediately contribute to a new partnership. The distributions in liquidation are governed by section 731. Under the bill, C's interest in the intangible will be treated as having a $500 basis, with a remaining amortization period of 10 years. D will be treated as having an interest in two assets: one with a basis of $1,000 and a remaining amortization period of 10 years, and the other with a basis of $600 and a new amortization period of 14 years.

As discussed more fully below, the bill also changes the treatment of payments made in liquidation of the interest of a deceased or retired partner in exchange for goodwill. Except in the case of payments made on the retirement or death of a general partner of a partnership for which capital is not a material income-producing factor, such payments will not be treated as a distribution of partnership income. Under the bill, however, if the partnership makes an election under section 754, section 734 will generally provide the partnership the benefit of a stepped-up basis for the retiring or deceased partner's share of partnership goodwill and an amortization deduction for the increase in basis under section 197.

[23] This discussion is subject to the application of the anti-churning rules which are discussed below.

For example, using the facts from the preceding examples, assume that on January 1, 1997, A retires from the partnership in exchange for a payment from the partnership of $800, all of which is in exchange for A's interest in the intangible asset owned by P. Under the bill, if there is a section 754 election in effect for 1997, P will be treated as having two amortizable section 197 intangibles: one with a basis of $1,500 and a remaining life of 10 years, and the other with a basis of $300 and a new life of 14 years.

Treatment of certain reinsurance transactions

The bill applies to any insurance contract that is acquired from another person through an assumption reinsurance transaction (but not through an indemnity reinsurance transaction).[24] The amount taken into account as the adjusted basis of such a section 197 intangible, however, is to equal the excess of (1) the amount paid or incurred by the acquirer/reinsurer under the assumption reinsurance transaction,[25] over (2) the amount of the specified policy acquisition expenses (as determined under section 848 of the Code) that is attributable to premiums received under the assumption reinsurance transaction. The amount of the specified policy acquisition expenses of an insurance company that is attributable to premiums received under an assumption reinsurance transaction is to be amortized over the period specified in section 848 of the Code.

Treatment of amortizable section 197 intangible as depreciable property

For purposes of chapter 1 of the Internal Revenue Code, an amortizable section 197 intangible is to be treated as property of a character which is subject to the allowance for depreciation provided in section 167. Thus, for example, an amortizable section 197 intangible is not a capital asset for purposes of section 1221 of the Code, but an amortizable section 197 intangible held for more than one year generally qualifies as property used in a trade or business for purposes of section 1231 of the Code. As further examples, an amortizable section 197 intangible is to constitute section 1245 property, and section 1239 of the Code is to apply to any gain recognized upon the sale or exchange of an amortizable section 197 intangible, directly or indirectly, between related persons.

Treatment of certain amounts that are properly taken into account in determining the cost of property that is not a section 197 intangible

The bill does not apply to any amount that is properly taken into account under present law in determining the cost of property that is not a section 197 intangible. Thus, for example, no portion of the cost of acquiring real property that is held for the production

[24] An assumption reinsurance transaction is an arrangement whereby one insurance company (the reinsurer) becomes solely liable to policyholders on contracts transferred by another insurance company (the ceding company). In addition, for purposes of the bill, an assumption reinsurance transaction is to include any acquisition of an insurance contract that is treated as occurring by reason of an election under section 338 of the Code.

[25] The amount paid or incurred by the acquirer/reinsurer under an assumption reinsurance transaction is to be determined under the principles of present law. (See Treas. Reg. sec. 1.817-4(d)(2).)

of rental income (for example, an office building, apartment building or shopping center) is to be taken into account under the bill (i.e., no goodwill, going concern value or any other section 197 intangible is to arise in connection with the acquisition of such real property). Instead, the entire cost of acquiring such real property is to be included in the basis of the real property and is to be recovered under the principles of present law applicable to such property.

Modification of purchase price allocation and reporting rules for certain asset acquisitions

Sections 338(b)(5) and 1060 of the Code authorize the Treasury Department to promulgate regulations that provide for the allocation of purchase price among assets in the case of certain asset acquisitions. Under regulations that have been promulgated pursuant to this authority, the purchase price of an acquired trade or business must be allocated among the assets of the trade or business using the "residual method."

Under the residual method specified in the Treasury regulations, all assets of an acquired trade or business are divided into the following four classes: (1) Class I assets, which generally include cash and cash equivalents; (2) Class II assets, which generally include certificates of deposit, U.S. government securities, readily marketable stock or securities, and foreign currency; (3) Class III assets, which generally include all assets other than those included in Class I, II, or IV (generally all furniture, fixtures, land, buildings, equipment, other tangible property, accounts receivable, covenants not to compete, and other amortizable intangible assets); and (4) Class IV assets, which include intangible assets in the nature of goodwill or going concern value. The purchase price of an acquired trade or business (as first reduced by the amount of the assets included in Class I) is allocated to the assets included in Class II and Class III based on the value of the assets included in each class. To the extent that the purchase price (as reduced by the amount of the assets in Class I) exceeds the value of the assets included in Class II and Class III, the excess is allocable to assets included in Class IV.

It is expected that the present Treasury regulations which provide for the allocation of purchase price in the case of certain asset acquisitions will be amended to reflect the fact that the bill allows an amortization deduction with respect to intangible assets in the nature of goodwill and going concern value. It is anticipated that the residual method specified in the regulations will be modified to treat all amortizable section 197 intangibles as Class IV assets and that this modification will apply to any acquisition of property to which the bill applies.

Section 1060 also authorizes the Treasury Department to require the transferor and transferee in certain asset acquisitions to furnish information to the Treasury Department concerning the amount of any purchase price that is allocable to goodwill or going concern value. The bill provides that the information furnished to the Treasury Department with respect to certain asset acquisitions is to specify the amount of purchase price that is allocable to amortizable section 197 intangibles rather than the amount of purchase

price that is allocable to goodwill or going concern value. In addition, it is anticipated that the Treasury Department will exercise its existing regulatory authority to require taxpayers to furnish such additional information as may be necessary or appropriate to carry out the provisions of the bill, including the amount of purchase price that is allocable to intangible assets that are not amortizable section 197 intangibles.

General regulatory authority

The Treasury Department is authorized to prescribe such regulations as may be appropriate to carry out the purposes of the bill including such regulations as may be appropriate to prevent avoidance of the purposes of the bill through related persons or otherwise. It is anticipated that the Treasury Department will exercise its regulatory authority where appropriate to clarify the types of intangible property that constitute section 197 intangibles.

Study

The Treasury Department is directed to conduct a continuing study of the implementation and effects of the bill, including effects on merger and acquisition activities (including hostile takeovers and leveraged buyouts). It is expected that the study will address effects of the legislation on the pricing of acquisitions and on the reported values of different types of intangibles (including goodwill). The Treasury Department is to report the initial results of such study as expeditiously as possible and no later than December 31, 1994. The Treasury Department is to provide additional reports annually thereafter.

Effective Date

In general

The provision generally applies to property acquired after the date of enactment of the bill. As more fully described below, however, a taxpayer may elect to apply the bill to all property acquired after July 25, 1991. In addition, a taxpayer that does not make this election may elect to apply present law (rather than the provisions of the bill) to property that is acquired after the date of enactment of the bill pursuant to a binding written contract in effect on the date of enactment of the bill and at all times thereafter until the property is acquired. Finally, special "anti-churning" rules may apply to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable under present law into amortizable property to which the bill applies.

Election to apply bill to property acquired after July 25, 1991

A taxpayer may elect to apply the bill to all property acquired by the taxpayer after July 25, 1991. If a taxpayer makes this election, the bill also applies to all property acquired after July 25, 1991, by any taxpayer that is under common control with the electing taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)) of the Code) at any time during the period that

began on November 22, 1991, and that ends on the date that the election is made.[26]

The election is to be made at such time and in such manner as may be specified by the Treasury Department,[27] and the election may be revoked only with the consent of the Treasury Department.

Elective binding contract exception

A taxpayer may also elect to apply present law (rather than the provisions of the bill) to property that is acquired after the date of enactment of the bill if the property is acquired pursuant to a binding written contract that was in effect on the date of enactment of the bill and at all times thereafter until the property is acquired. This election may not be made by any taxpayer that is subject to either of the elections described above that apply the provisions of the bill to property acquired before the date of enactment of the bill.

The election is to be made at such time and in such manner as may be specified by the Treasury Department,[28] and the election may be revoked only with the consent of the Treasury Department.

Anti-churning rules

Special rules are provided by the bill to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable under present law into amortizable property to which the bill applies.

Under these "anti-churning" rules, goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill may not be amortized as an amortizable section 197 intangible if: (1) the section 197 intangible is acquired by a taxpayer after the date of enactment of the bill; and (2) either (a) the taxpayer or a related person held or used the intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill; (b) the taxpayer acquired the intangible from a person that held such intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill and, as part of the transaction, the user of the intangible does not change; or (c) the taxpayer grants the right to use the intangible to a person (or a person related to such person) that held or used the intangible at any time during the period that begins on July 25, 1991, and that ends on

[26] However, with certain exceptions, an amortization deduction is not to be allowed under the bill for goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill if: (1) the section 197 intangible is acquired after July 25, 1991; and (2) either (a) the taxpayer or a related person held or used the intangible on July 25, 1991; (b) the taxpayer acquired the intangible from a person that held such intangible on July 25, 1991, and, as part of the transaction, the user of the intangible does not change; or (c) the taxpayer grants the right to use the intangible to a person (or a person related to such person) that held or used the intangible on July 25, 1991. See below for a more detailed description of these "anti-churning" rules.

[27] It is anticipated that the Treasury Department will require the election to be made on the timely filed Federal income tax return of the taxpayer for the taxable year that includes the date of enactment of the bill.

[28] It is anticipated that the Treasury Department will require the election to be made on the timely filed Federal income tax return of the taxpayer for the taxable year that includes the date of enactment of the bill.

the date of enactment of the bill. The anti-churning rules, however, do not apply to the acquisition of any intangible by a taxpayer if the basis of the intangible in the hands of the taxpayer is determined under section 1014(a) (relating to property acquired from a decedent).

For purposes of the anti-churning rules, a person is related to another person if: (1) the person bears a relationship to that person which would be specified in section 267(b)(1) or 707(b)(1) of the Code if those sections were amended by substituting 20 percent for 50 percent; or (2) the persons are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of the Code). A person is treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

In addition, in determining whether the anti-churning rules apply with respect to any increase in the basis of partnership property under section 732, 734, or 743 of the Code, the determinations are to be made at the partner level and each partner is to be treated as having owned or used the partner's proportionate share of the partnership property. Thus, for example, the anti-churning rules do not apply to any increase in the basis of partnership property that occurs upon the acquisition of an interest in a partnership that has made a section 754 election if the person acquiring the partnership interest is not related to the person selling the partnership interest.[29]

These "anti-churning" rules are not to apply to any section 197 intangible that is acquired from a person with less than a 50-percent relationship to the acquirer to the extent that: (1) the seller recognizes gain on the transaction with respect to such intangible; and (2) the seller agrees, notwithstanding any other provision of the Code, to pay a tax on such gain which, when added to any other Federal income tax imposed on such gain, equals the product of such gain and the highest rate of tax imposed by section 1 or 11 of the Code, whichever is applicable. The seller is treated as satisfying the second requirement if the excess of (1) the total tax liability for the year of the transaction over (2) what its tax liability for such year would have been had the sale of the intangible (but not the remainder of the transaction) been excluded from the computation equals or exceeds the product of the gain on that asset times the relevant maximum rate.

The bill also contains a general anti-abuse rule that applies to any section 197 intangible that is acquired by a taxpayer from another person. Under this rule, a section 197 intangible may not be amortized under the provisions of the bill if the taxpayer acquired

[29] In addition to these rules, it is anticipated that rules similar to the anti-churning rules under section 168 of the Code will apply in determining whether persons are related. (See Prop. Treas. Reg. 1.168-4 (February 16, 1984).) For example, it is anticipated that a corporation, partnership, or trust that owned or used property at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill and that is no longer in existence will be considered to be in existence for purposes of determining whether the taxpayer that acquired the property is related to such corporation, partnership, or trust.

As a further example, it is anticipated that in the case of a transaction to which section 338 of the Code applies, the corporation that is treated as selling its assets will not to be considered related to the corporation that is treated as purchasing the assets if at least 80 percent of the stock of the corporation that is treated as selling its assets is acquired by purchase after July 25, 1991.

the intangible in a transaction one of the principal purposes of which is to (1) avoid the requirement that the intangible be acquired after the date of enactment of the bill or (2) avoid any of the anti-churning rules described above that are applicable to goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill.

Finally, the special rules described above that apply in the case of a transactions described in section 332, 351, 361, 721, 731, 1031, or 1033 of the Code also apply for purposes of the effective date. Consequently, if the transferor of any section 197 property is not allowed an amortization deduction with respect to such property under this provision, then the transferee is not allowed an amortization deduction under this provision to the extent of the adjusted basis of the transferee that does not exceed the adjusted basis of the transferor. In addition, this provision is to apply to any subsequent transfers of any such property in a transaction described in section 332, 351, 361, 721, 731, 1031, or 1033.

Senate Amendment

The Senate amendment is the same as the House bill with the following modifications:

The straight line amortization period for an amortizable section 197 intangible is 16 years rather than 14 years.

Purchased mortgage servicing rights (not acquired with a trade or business or substantial portion thereof) are excluded from the definition of a section 197 intangible.

At the election of the taxpayer, the acquisition of certain intangibles from a "qualified research entity" is subject to present law rather than the bill.

The Treasury Department authority to issue regulations that apply present law rather than the bill to certain rights of fixed duration under a contract (or any right granted by a governmental entity) applies only if the fixed duration of the right is less than 16 years.

Under the Senate amendment, the term section 197 intangible does not include the amount of any fees for professional services, and any transaction costs, incurred by parties to a reorganization with respect to which any portion of the gain or loss is not recognized under part III of subchapter C.

The Senate amendment permits taxpayers to elect to settle the treatment of amortizable section 197 intangibles for all open taxable years, generally by amortizing 50 percent of the adjusted basis of such intangibles (using the amortization method and period claimed by the taxpayer on specified returns).

The Senate amendment does not require annual reports from the Treasury Department on the implementation and effects of the intangibles legislation.

The technical explanation of the Senate Amendment also clarifies certain technical points.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following modifications:

Treasury regulatory authority regarding rights of fixed duration or amount

The conference agreement adopts the Senate provision and technical explanation regarding the scope of Treasury regulatory authority to except from the definition of a section 197 intangible certain rights under a contract (or granted by a governmental entity). The agreement provides additional technical clarification regarding such rights.

Under the conference agreement, the Treasury Department is authorized to issue regulations that exclude a right received under a contract, or granted by a governmental unit or an agency or instrumentality thereof, from the definition of a section 197 intangible if (1) the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof) and (2) the right either (A) has a fixed duration of less than 14 years or (B) is fixed as to amount [30] and the cost is properly recoverable (without regard to this provision) under a method similar to the unit of production method.

Generally, it is anticipated that the mere fact that a taxpayer will have the opportunity to renew a contract or other right on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value and in which the taxpayer is not contractually advantaged, will not be taken into account in determining the duration of such right or whether it is for a fixed amount. However, the fact that competitive bidding occurs at the time of renewal and that there are or may be modifications in price (or in terms or requirements relating to the right that increase the cost to the bidder) shall not be within the scope of the preceding sentence unless the bidding also actually produces a fair market value price comparable to the price that would obtain if the rights were purchased immediately after renewal from a person (other than the person granting the renewal) in an arm's length transaction. Furthermore, it is expected that, as under present law, the Treasury Department will take into account all the facts and circumstances, including any facts indicating an actual practice of renewals or expectancy of renewals.

For example, assume that Company A enters into a license with Company B to use certain know-how developed by B. In addition, assume that the license is for five years, that the license cannot be renewed by A except on terms that are fully available to A's competitors and that the price paid by A will reflect the arm's length price that a third party would pay A for the license immediately after renewal. Finally, assume that the license does not constitute a substantial portion of a trade or business and is not en-

[30] For example, an emission allowance granted a public utility under Title IV of the Clean Air Act Amendments of 1990 is a right that is limited in amount within the meaning of this provision.

tered into as part of a transaction (or series of related transactions) that constitute the acquisition of a trade or business or substantial portion thereof. It is anticipated that in these circumstances the regulations will provide that the license is not a section 197 intangible because it is of fixed duration of less than 14 years.

The regulations may also prescribe rules governing the extent to which renewal options and similar provisions will be taken into account for the purpose of determining whether rights are fixed in duration or amount. It is also anticipated that such regulations may prescribe the appropriate method of taking into account the capitalized costs of rights which are excluded by such regulations from the definition of a section 197 intangible.

Certain fees for professional services and transaction costs

The conference agreement adopts the Senate provision regarding fees for professional services and transaction costs, with a technical modification. The modification clarifies that the provision applies to any transaction with respect to which any portion of the gain or loss is not recognized under Part III of subchapter C of the Code, in addition to those transactions that are "reorganizations" as defined by section 368 of the Code.

The conferees have adopted this provision because of concern that some taxpayers might attempt to contend that the 14 year amortization provided by the provision applies to any such amounts that may be required to be capitalized under present law but that do not relate to any asset with a readily identifiable useful life.[31] The exception is provided solely to clarify that section 197 is not to be construed to provide 14-year amortization for any such amounts. No inference is intended that such amounts would (but for this provision) be properly characterized as amounts eligible for such 14-year amortization, nor is any inference intended that any amounts not specified in this provision should be so characterized. In addition, no inference is intended regarding the proper treatment of professional fees or transaction costs in other circumstances under present law.

Anti-churning rules

The agreement clarifies that amounts that are properly deductible pursuant to section 1253 under present law are to be treated for purposes of the anti-churning provision as amounts for which depreciation or amortization is allowable under present law.

Other technical clarifications

The conference agreement follows the technical explanation of the Senate amendment with respect to certain additional technical items.

Thus, with respect to the definition of "interests in land" that are excepted from the definition of a "section 197 intangible," the conferees intend to clarify that the costs of acquiring licenses, permits, and other rights relating to improvements to land, such as building construction or use permits, are to be taken into account

[31] *See, e.g., INDOPCO, Inc. v. Commissioner*, 112 S. Ct. 1039 (1992)

in the same manner as the underlying improvement in accordance with present law.

In addition, with respect to the modifications made to section 1060 under the conference agreement, the conferees intend to clarify that there is no intention to codify any aspect of the existing regulations under section 1060 or other provisions. Furthermore, it is expected that the Treasury Department will review the operation of the regulations under sections 1060 and 338 in light of new section 197.

Report regarding backlog of pending cases

The purpose of the provision is to simplify the law regarding the amortization of intangibles. The severe backlog of cases in audit and litigation is a matter of great concern to the conferees; and any principles established in such cases will no longer have precedential value due to the provision contained in the conference agreement. Therefore, the conferees urge the Internal Revenue Service in the strongest possible terms to expedite the settlement of cases under present law. In considering settlements and establishing procedures for handling existing controversies in an expedient and balanced manner, the conferees strongly encourage the Internal Revenue Service to take into account the principles of the bill so as to produce consistent results for similarly situated taxpayers. However, no inference is intended that any deduction should be allowed in these cases for assets that are not amortizable under present law.

In addition, the conference agreement requires the Treasury Department to report annually to the House Ways and Means Committee and the Senate Finance Committee, regarding the volume of pending disputes in audit and litigation involving the amortization of intangibles and the progress made in resolving such disputes. It is expected that the report will also address the effects of the provision on the volume and nature of disputes regarding the amortization of intangibles. The first such report shall be made no later than December 31, 1993.

2. Modify special treatment of certain liquidation payments

PRESENT LAW

Payments for purchase of goodwill and accounts receivable

A current deduction generally is not allowed for a capital expenditure (*i.e.*, an expenditure that yields benefits beyond the current taxable year). The cost of goodwill acquired in connection with the assets of a going concern normally is a capital expenditure, as is the cost of acquiring accounts receivable. The cost of acquiring goodwill is recovered only when the goodwill is disposed of, while the cost of acquiring accounts receivable is taken into account only when the receivable is disposed of or becomes worthless.

Payments made in liquidation of partnership interest

The tax treatment of a payment made in liquidation of the interest of a retiring or deceased partner depends upon whether the payment is made in exchange for the partner's interest in partner-

ship property. A liquidating payment made in exchange for such property is treated as a distribution by the partnership (sec. 736(b)). Such distribution generally results in gain to the retiring partner only to the extent that the cash distributed exceeds the partner's adjusted basis in his partnership interest.

A liquidating payment not made in exchange for the partner's interest in partnership property receives either of two possible treatments. If the amount of the payment is determined without reference to partnership income, it is treated as a guaranteed payment and is generally deductible (sec. 736(a)(2)). If the amount of payment is determined by reference to partnership income, the payment is treated as a distributive share of partnership income, thereby reducing the distributive shares of other partners (which is equivalent to a deduction) (sec. 736(a)(2)).

A special rule treats amounts paid for goodwill of the partnership (except to the extent provided in the partnership agreement) and unrealized receivables as not made in exchange for an interest in partnership property (sec. 736(b)(2)(B)). Thus, such amounts may be deductible. Unrealized receivables include unbilled amounts, accounts receivable, depreciation recapture, market discount, and certain other items (sec. 751(c)).

Sale or exchange of a partnership interest

The sale or exchange of a partnership interest results in capital gain or loss to the transferor partner, except to the extent that ordinary income or loss is recognized with respect to the partner's share of the partnership's unrealized receivables and substantially appreciated inventory items (sec. 741). It is often unclear whether a payment by a partnership to a retiring partner is made in sale or exchange of, or in liquidation of, a partnership interest.

HOUSE BILL

In general

The bill generally repeals the special treatment of liquidation payments made for goodwill and unrealized receivables. Thus, such payments would be treated as made in exchange for the partner's interest in partnership property, and not as a distributive share or guaranteed payment that could give rise to a deduction or its equivalent. The bill does not change present law with respect to payments made to a general partner in a partnership in which capital is not a material income-producing factor.[32] In addition, the bill does not affect the deductibility of compensation paid to a retiring partner for past services.

Unrealized receivables

The bill also repeals the special treatment of payments made for unrealized receivables (other than unbilled amounts and accounts receivable) for all partners. Such amounts would be treated as made in exchange for the partner's interest in partnership prop-

---

[32] The determination of whether capital is a material income-producing factor would be made under principles of present and prior law (*e.g.*, sections 401(c)(2) and 911(d) of the Code and old section 1348(b)(1)(A) of the Code).

erty. Thus, for example, a payment for depreciation recapture would be treated as made in exchange for an interest in partnership property, and not as a distributive share or guaranteed payment that could give rise to a deduction or its equivalent.

Effective date

The provision generally applies to partners retiring or dying on or after June 25, 1992. The provision does not apply to any partner who retires on or after June 25, 1992, if a written contract to purchase the partner's interest in the partnership was binding on June 24, 1992 and at all times thereafter until such purchase. For this purpose, a written contract is to be considered binding only if the contract specifies the amount to be paid for the partnership interest and the timing of any such payments.

Senate Amendment

The Senate amendment is the same as the House bill except for the effective date provision. The Senate amendment applies to partners retiring or dying on or after February 14, 1992 rather than on or after June 25, 1992.

The technical explanation of the Senate amendment also provides additional clarification regarding when capital is a material income producing factor.

Conference Agreement

The conference agreement follows the House bill but includes the technical explanation from the Senate amendment regarding when capital is a material income producing factor.

Thus, under the conference agreement, for purposes of this provision, capital is not a material income producing factor where substantially all the gross income of the business consists of fees, commissions, or other compensation for personal services performed by an individual. The practice of his or her profession by a doctor, dentist, lawyer, architect, or accountant will not, as such, be treated as a trade or business in which capital is a material income producing factor even though the practitioner may have a substantial capital investment in professional equipment or in the physical plant constituting the office from which such individual conducts his or her practice so long as such capital investment is merely incidental to such professional practice.

F. Provisions Relating to Subchapter S Corporations

1. Determination of whether an S corporation has one class of stock

Present Law

Under present law, a small business corporation eligible to be an S corporation may not have more than one class of stock. Differences in voting rights are disregarded in determining whether a corporation has more than one class of stock. In addition, certain debt instruments may not be treated as a second class of stock for purposes of this rule.

On October 5, 1990, the Treasury Department issued proposed regulations [1] providing that a corporation has more than one class of stock if all of the outstanding shares of stock do not confer identical rights to distribution and liquidation proceeds, regardless of whether any differences in rights occur pursuant to the corporate charter, articles or bylaws, by operation of State law, by administrative action, or by agreement. The proposed regulations also provided that, notwithstanding that all outstanding shares of stock confer identical rights to distribution and liquidation proceeds, a corporation has more than one class of stock if the corporation makes non-conforming distributions (i.e., distributions that differ with respect to timing or amount with respect to each share of stock), with limited exceptions for certain redemptions and certain differences in the timing of distributions. The proposed regulations were to apply to taxable years beginning after December 31, 1982.

On August 8, 1991, the Treasury Department issued revised proposed regulations replacing the proposed regulations described above. The regulations were issued as final regulations on May 29, 1992 (Treasury Decision 8419). These regulations provide that a corporation is treated as having only one class of stock if all outstanding shares of stock confer identical rights to distribution and liquidation proceeds. Under the revised regulations, any distributions that differ in timing or amount are to be given appropriate tax effect in accordance with the facts and circumstances. These regulations generally apply to taxable years beginning after May 28, 1992.

House Bill

The House bill provides that a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds. Applicable State law, taking into account legally enforceable rights under the corporate charter, articles or bylaws, administrative action, and agreements relating to distributions or liquidation proceeds with respect to shares, determines whether the outstanding shares confer different rights to distributions or liquidation proceeds.

Where an S corporation in fact makes distributions which differ as to timing or amount, the bill in no way limits the Internal Revenue Service from properly characterizing the transaction for tax purposes. For example, if a distribution is properly characterized as compensation, the Service could require it to be so treated for tax purposes. Similarly, if a payment appearing as compensation should be properly characterized as a distribution, the Service could require it to be so treated for purposes of computing taxable income.

Effective date.—The provision applies to taxable years beginning after December 31, 1982.

Senate Amendment

The Senate amendment is the same as the House bill.

---

[1] Proposed Treasury Regulation sec. 1.1361-1(l)(2).

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Authority to validate certain invalid elections

PRESENT LAW

Under present law, if the Internal Revenue Service determines that a corporation's Subchapter S election is inadvertently terminated, the Service can waive the effect of the terminating event for any period if the corporation timely corrects the event and if the corporation and shareholders agree to be treated as if the election had been in effect for that period. Present law does not grant the Internal Revenue Service the ability to waive the effect of an inadvertent invalid Subchapter S election.

In addition, under present law, a small business corporation must elect to be an S corporation no later than the 15th day of the third month of the taxable year for which the election is effective. The Internal Revenue Service may not validate a late election.

HOUSE BILL

Under the House bill, the authority of the Internal Revenue Service to waive the effect of an inadvertent termination is extended to allow the Service to waive the effect of an invalid election caused by an inadvertent failure to qualify as a small business corporation or to obtain the required shareholder consents (including elections regarding qualified subchapter S trusts), or both. It is intended that the Internal Revenue Service be reasonable in granting waivers of inadvertent invalid elections so that a corporation whose election was inadvertently invalid would be treated as an S corporation as if the election had been effective.[2]

The bill also allows the Internal Revenue Service to treat a late Subchapter S election as timely where the Service determines that there was reasonable cause for the failure to make the election timely. It is intended that the Internal Revenue Service adopt a standard similar to the standard currently set forth in Treasury regulation sec. 1.9100-1 in applying this provision.

Effective date.—The provision applies to taxable years beginning after December 31, 1982.[3]

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

---

[2] Thus, for example, the Internal Revenue Service would have authority to waive the effect of an invalid election in a situation such as that set forth in PLR 8807070 (Nov. 25, 1987) where the election was not valid because the election was filed before the issuance of a certificate of incorporation by the State.

[3] This is the effective date of the present-law provision regarding inadvertent terminations.

3. *Treatment of distributions by S corporations during loss year*

PRESENT LAW

Under present law, the amount of loss an S corporation shareholder may take into account for a taxable year cannot exceed the sum of shareholder's adjusted basis in his or her stock of the corporation and the adjusted basis in any indebtedness of the corporation to the shareholder. Any excess loss is carried forward.

Any distribution to a shareholder by an S corporation generally is tax-free to the shareholder to the extent of the shareholder's adjusted basis of his or her stock. The shareholder's adjusted basis is reduced by the tax-free amount of the distribution. Any distribution in excess of the shareholder's adjusted basis is treated as gain from the sale or exchange of the stock.

Under present law, income (whether or not taxable) and expenses (whether or not deductible) serve, respectively, to increase and decrease an S corporation shareholder's basis in the stock of the corporation. These rules appear to require that the adjustments to basis for items of both income and loss for any taxable year apply before the adjustment for distributions applies.[4]

These rules limiting losses and allowing tax-free distributions up to the amount of the shareholder's adjusted basis are similar in certain respects to the rules governing the treatment of losses and cash distributions by partnerships. Under the partnership rules (unlike the S corporation rules), for any taxable year, a partner's basis is first increased by items of income, then decreased by distributions, and finally is decreased by losses for that year.[5]

In addition, if the S corporation has accumulated earnings and profits,[6] any distribution in excess of the amount in an "accumulated adjustments account" will be treated as a dividend (to the extent of the accumulated earnings and profits). A dividend distribution does not reduce the adjusted basis of the shareholder's stock. The "accumulated adjustments account" generally is the amount of the accumulated undistributed post-1982 gross income less deductions.

HOUSE BILL

The House bill provides that the adjustments for distributions made by an S corporation during a taxable year are taken into account before applying the loss limitation for the year. Thus, distributions during a year reduce the adjusted basis for purposes of determining the allowable loss for the year, but the loss for a year does not reduce the adjusted basis for purposes of determining the tax status of the distributions made during that year.

The bill also provides that in determining the amount in the accumulated adjustment account for purposes of determining the tax treatment of distributions made during a taxable year by an S corporation having accumulated earnings and profits, net negative

---

[4] See section 1366(d)(1)(A); H. Rep. 97-826, p. 17; S. Rep. 97-640, p. 18; Prop. Treas. Reg. sec. 1.1367-1(e).

[5] Treas. Reg. sec. 1.704-1(d)(2); Rev. Rul. 66-94, 1966-1 C.B. 166.

[6] An S corporation may have earnings and profits from years prior to its subchapter S election or from pre-1983 subchapter S years.

adjustments (i.e., the excess of losses and deductions over income) for that taxable year are disregarded.

The following examples illustrate the application of these provisions:

Example 1.—X is the sole shareholder of A, a calendar year S corporation with no accumulated earnings and profits. X's adjusted basis in the stock of A on January 1, 1992, is $1,000 and X holds no debt of A. During the taxable year, A makes a distribution to X of $600, recognizes a capital gain of $200 and sustains an operating loss of $900. Under the bill, X's adjusted basis in the A stock is increased to $1,200 ($1,000 plus $200 capital gain recognized) pursuant to section 1368(d) to determine the effect of the distribution. X's adjusted basis is then reduced by the amount of the distribution to $600 ($1,200 less $600) to determine the application of the loss limitation of section 1366(d)(1). X is allowed to take into account $600 of A's operating loss, which reduces X's adjusted basis to zero. The remaining $300 loss is carried forward pursuant to section 1366(d)(2).

Example 2.—The facts are the same as in Example 1, except that on January 1, 1992, A has accumulated earnings and profits of $500 and an accumulated adjustments account of $200. Under the bill, because there is a net negative adjustment for the year, no adjustment is made to the accumulated adjustments account before determining the effect of the distribution under section 1368(c).

As to A, $200 of the $600 distribution is a distribution of A's accumulated adjustments account, reducing the accumulated adjustments account to zero. The remaining $400 of the distribution is a distribution of accumulated earnings and profits ("E&P") and reduces A's E&P to $100. A's accumulated adjustments account is then increased by $200 to reflect the recognized capital gain and reduced by $900 to reflect the operating loss, leaving a negative balance in the accumulated adjustment account on January 1, 1993, of $700 (zero plus $200 less $900).

As to X, $200 of the distribution is applied against A's adjusted basis of $1,200 ($1,000 plus $200 capital gain recognized), reducing X's adjusted basis to $1,000. The remaining $400 of the distribution is taxable as a dividend and does not reduce X's adjusted basis. Because X's adjusted basis is $1,000, the loss limitation does not apply to X, who may deduct the entire $900 operating loss. X's adjusted basis is then decreased to reflect the $900 operating loss. Accordingly, X's adjusted basis on January 1, 1993, is $100 ($1,000 plus $200 less $200 less $900).

Effective date.—These provisions apply to distributions made in taxable years beginning after December 31, 1991.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Treatment of S corporations as shareholders in C corporations

PRESENT LAW

Present law contains several provisions relating to the treatment of S corporations as corporations generally for purposes of the Internal Revenue Code.

First, under present law, the taxable income of an S corporation is computed in the same manner as in the case of an individual (sec. 1363(b)). Under this rule, the provisions of the Code governing the computation of taxable income which are applicable only to corporations, such as the dividends received deduction, do not apply to S corporations.

Second, except as otherwise provided by the Internal Revenue Code and except to the extent inconsistent with subchapter S, subchapter C (i.e., the rules relating to corporate distributions and adjustments) applies to an S corporation and its shareholders (sec. 1371(a)(1)). Under this second rule, provisions such as the corporate reorganization provisions apply to S corporations. Thus, a C corporation may merge into an S corporation tax-free.

Finally, an S corporation in its capacity as a shareholder of another corporation is treated as an individual for purposes of subchapter C (sec. 1371(a)(2)).

The Internal Revenue Service has taken the position that this rule prevents the tax-free liquidation of a C corporation into an S corporation because a C corporation cannot liquidate tax-free when owned by an individual shareholder.[7] Thus, a C corporation may elect S corporation status tax-free or may merge into an S corporation tax-free, but may not liquidate into an S corporation tax-free.[8] Also, the Service's reasoning would also prevent an S corporation from making an election under section 338 where a C corporation was acquired by an S corporation.

HOUSE BILL

The House bill repeals the rule that treats an S corporation in its capacity as a shareholder of another corporation as an individual. Thus, the liquidation of a C corporation into an S corporation will be governed by the generally applicable subchapter C rules, including the provisions of sections 332 and 337 allowing the tax-free liquidation of a corporation into its parent corporation. Following a tax-free liquidation, the built-in gains of the liquidating corporation may later be subject to tax under section 1374 upon a subsequent disposition. An S corporation will also be eligible to make a section 338 election (assuming all the requirements are otherwise met), resulting in immediate recognition of all the acquired C corporation's gains and losses (and the resulting imposition of a tax).

The repeal of this rule does not change the general rule governing the computation of income of an S corporation. For example, it does not allow an S corporation, or its shareholders, to claim a dividends received deduction with respect to dividends received

[7] See PLR 8818049, (Feb. 10, 1988).

[8] A tax is imposed with respect to LIFO inventory held by a C corporation becoming an S corporation.

by the S corporation, or to treat any item of income or deduction in a manner inconsistent with the treatment accorded to individual taxpayers.

No inference is intended regarding the present-law treatment of these transactions.

Effective date.—The provision applies to taxable years beginning after December 31, 1991.

5. S corporations permitted to hold subsidiaries

PRESENT LAW

Under present law, an S corporation may not be a member of an affiliated group of corporations (other than by reason of ownership in certain inactive corporations). The legislative history indicates that this rule was adopted to prevent the filing of consolidated returns by a group which includes an S corporation.[9]

HOUSE BILL

The House bill repeals the rule that an S corporation may not be a member of an affiliated group of corporations. Thus, an S corporation will be allowed to own up to 100 percent of the stock of a C corporation. However, an S corporation cannot be included in a group filing a consolidated return.

Under the bill, if an S corporation holds 100 percent of the stock of a C corporation that, in turn, holds 100 percent of the stock of another C corporation, the two C corporations may elect to file a consolidated return (if otherwise eligible), but the S corporation may not join in the election.

Effective date.—The provision applies to taxable years beginning after December 31, 1991.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

6. Elimination of pre-1983 earnings and profits of S corporations

PRESENT LAW

Under present law, the accumulated earnings and profits of a corporation are not increased for any year in which an election to be treated as an S corporation is in effect. However, under the subchapter S rules in effect before revision in 1982, a corporation electing subchapter S for a taxable year increased its accumulated earnings and profits if its earnings and profits for the year exceeded both its taxable income for the year and its distributions out of that year's earnings and profits. As a result of this rule, a shareholder may later be required to include in his income the accumu-

---

[9] See S. Rpt. No. 1983 (85th Cong., 2d Sess., 1958), p. 88.

lated earnings and profits when it is distributed by the corporation. The 1982 revision to subchapter S repealed this rule for earnings attributable to taxable years beginning after 1982 but did not do so for previously accumulated S corporation earnings and profits.

HOUSE BILL

The House bill provides that if a corporation is an S corporation for its first taxable year beginning after December 31, 1991, the accumulated earnings and profits of the corporation as of the beginning of that year are reduced by the accumulated earnings and profits (if any) accumulated in any taxable year beginning before January 1, 1983, for which the corporation was an electing small business corporation under subchapter S. Thus, such a corporation's accumulated earnings and profits will be solely attributable to taxable years for which an S election was not in effect. This rule is generally consistent with the change adopted in 1982 limiting the S shareholder's taxable income attributable to S corporation earnings to his share of the taxable income of the S corporation.

Effective date.—The provision applies to taxable years beginning after December 31, 1991.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

7. Treatment of items of income in respect of a decedent held by an S corporation

PRESENT LAW

Income in respect of a decedent (IRD) generally consists of items of gross income that accrued during the decedent's lifetime but were not yet includible in the decedent's income before his death under his method of accounting. IRD is includible in the income of the person acquiring the right to receive such item. A deduction for the estate tax attributable to an item of IRD is allowed to the person who includes the item in gross income (sec. 691(c)).

The cost or basis of property acquired from a decedent is its fair market value at the date of death (or alternate valuation date if that date is elected for estate tax purposes). This basis often is referred to as a "stepped-up basis". Property that constitutes a right to receive IRD does not receive a stepped-up basis.

The basis of a partnership interest or corporate stock acquired from a decedent generally is stepped-up at death. Under Treasury regulations, the basis of a partnership interest acquired from a decedent is reduced to the extent that its value is attributable to items constituting IRD.[10] Although S corporation income is includ-

[10] Treas. Reg. sec. 1.742-1.

ed in the income of the shareholders in a manner similar to the inclusion of partnership income in the income of the partners, no comparable regulation provides for a reduction in the basis of stock of an S corporation acquired from a decedent where the S corporation holds items of IRD on the date of death of a shareholder. Thus, under present law, the treatment of an item of IRD held by an S corporation is unclear.

HOUSE BILL

The House bill provides that a person acquiring stock in an S corporation from a decedent will treat as IRD his pro rata share of any item of income of the corporation which would have been IRD if that item had been acquired directly from the decedent. Where an item is treated as IRD, a deduction for the estate tax attributable to the item generally will be allowed under the provisions of section 691(c). The stepped-up basis in the stock will be reduced by the extent to which the value of the stock is attributable to items consisting of IRD. This basis rule is comparable to the present-law partnership rule.

No inference is intended regarding the present-law treatment of IRD in the case of S corporations.

Effective date.—The provision applies with respect to decedents dying after date of enactment of the bill.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

8. Certain trusts eligible to hold stock in S corporations

PRESENT LAW

Under present law, trusts other than grantor trusts, voting trusts, certain testamentary trusts (for a 60-day or two-year period) and "qualified subchapter S trusts" may not be shareholders in a S corporation. A "qualified subchapter S trust" is a trust which is required to have only one current income beneficiary (for life). All the income (as defined for local law purposes) must be currently distributed to that beneficiary. The beneficiary is treated as the owner of the portion of the trust consisting of the stock in the S corporation.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment allows stock in an S corporation to be held by certain trusts ("electing small business trust"). In order to qualify for this treatment, all beneficiaries of the trust must be individuals or estates (including the bankruptcy estate of an individ-

ual). No interest in the trust may be acquired by purchase. For this purpose, "purchase" means any acquisition of property with a cost basis (determined under section 1012). Thus, interests in the trust must be acquired by reason of gift, bequest, etc.

A trust must elect to be treated as an electing small business trust. An election applies to the taxable year for which made and can be revoked only with the consent of the Secretary of the Treasury or his delegate.

Each potential current beneficiary of the trust is counted as a shareholder for purposes of the 35-shareholder limitation (or if there were no potential current beneficiaries, the trust is treated as the shareholder). A potential current income beneficiary means any person, with respect to the applicable period, who is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. Where the trust disposes of all the stock in an S corporation, any person who first became so eligible during the 60 days before the disposition shall not be treated as a potential current beneficiary.

A qualified subchapter S trust with respect to which an election under section 1361(d)(2) is in effect, and an exempt employee's described in section 401(a) are not eligible to qualify as an electing small business trust.

Treatment of items relating to S corporation stock

The portion of the trust which consists of stock in one or more S corporations is treated as a separate trust for purposes of computing the income tax attributable to the S corporation stock held by the trust. The trust is taxed at the highest individual rate (currently 31 percent) on this portion of the trust's income. The taxable income attributable to this portion includes (i) the items of income, loss, or deduction allocated to it as an S corporation shareholder under the rules of subchapter S, (ii) gain or loss from the sale of the S corporation stock, and (iii) to the extent provided in regulations, any state or local income taxes and administrative expenses of the trust properly allocable to the S corporation stock. Otherwise allowable capital losses are allowed only to the extent of capital gains.

In computing the trust's income tax on this portion of the trust, no deduction is allowed for amounts distributed to beneficiaries, and no deduction or credit is allowed for any item other than the items described above. This income is not included in the distributable net income of the trust, and thus is not included in the beneficiaries' income. No item relating to the S corporation stock may be apportioned to any beneficiary.

On the termination of all or any portion of an electing small business trust the loss carryovers or excess deductions referred to in section 642(h) are to be taken into account by the entire trust, subject to the usual rules on termination of the entire trust.

Treatment of remainder of items held by trust

In determining the tax liability with regard to the remaining portion of the trust, the items taken into account by the subchapter S portion of the trust are disregarded. Although distributions from the trust are deductible in computing the taxable income on

this portion of the trust, under the usual rules of subchapter J, the trust's distributable net income does not include any income attributable to the S corporation stock.

Effective date.—The provision applies to taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not contain the provision in the Senate amendment.

G. ACCOUNTING PROVISIONS

1. Modifications to the look-back method for long-term contracts

PRESENT LAW

Taxpayers engaged in the production of property under a long-term contract generally must compute income from the contract under the percentage of completion method. Under the percentage of completion method, a taxpayer must include in gross income for any taxable year an amount that is based on the product of (1) the gross contract price and (2) the percentage of the contract completed as of the end of the year. The percentage of the contract completed as of the end of the year is determined by comparing costs incurred with respect to the contract as of the end of the year with the estimated total contract costs.

Because the percentage of completion method relies upon estimated, rather than actual, contract price and costs to determine gross income for any taxable year, a "look-back method" is applied in the year a contract is completed in order to compensate the taxpayer (or the Internal Revenue Service) for the acceleration (or deferral) of taxes paid over the contract term. The first step of the look-back method is to reapply the percentage of completion method using actual contract price and costs rather than estimated contract price and costs. The second step generally requires the taxpayer to recompute its tax liability for each year of the contract using gross income as reallocated under the look-back method. If there is any difference between the recomputed tax liability and the tax liability as previously determined for a year, such difference is treated as a hypothetical underpayment or overpayment of tax to which the taxpayer applies a rate of interest equal to the overpayment rate, compounded daily.[1] The taxpayer receives (or pays) interest if the net amount of interest applicable to hypothetical overpayments exceeds (or is less than) the amount of interest applicable to hypothetical underpayments.

The look-back method must be reapplied for any item of income or cost that is properly taken into account after the completion of the contract.

The look-back method does not apply to any contract that is completed within two taxable years of the contract commencement date if the gross contract price does not exceed the lesser of (1) $1

---

[1] The overpayment rate equals the applicable Federal short-term rate plus two percentage points. This rate is adjusted quarterly by the IRS. Thus, in applying the look-back method for a contract year, a taxpayer may be required to use five different interest rates.

million or (2) one percent of the average gross receipts of the taxpayer for the three preceding taxable years. In addition, a simplified look-back method is available to certain pass-through entities and, pursuant to Treasury regulations, to certain other taxpayers. Under the simplified look-back method, the hypothetical underpayment or overpayment of tax for a contract year generally is determined by applying the highest rate of tax applicable to such taxpayer to the change in gross income as recomputed under the look-back method.

HOUSE BILL

Election not to apply the look-back method for de minimis amounts

The House bill provides that a taxpayer may elect not to apply the look-back method with respect to a long-term contract if for each prior contract year, the cumulative taxable income (or loss) under the contract as determined using estimated contract price and costs is within 10 percent of the cumulative taxable income (or loss) under the contract as determined using actual contract price and costs.

Thus, under the election, upon completion of a long-term contract, a taxpayer would be required to apply the first step of the look-back method (the reallocation of gross income using actual, rather than estimated, contract price and costs), but would not be required to apply the additional steps of the look-back method if the application of the first step resulted in de minimis changes to the amount of taxable income previously taken into account under the contract for each prior contract year.

The election applies to all long-term contracts completed during the taxable year for which the election is made and to all long-term contracts completed during subsequent taxable years, unless the election is revoked with the consent of the Secretary of the Treasury.

Example 1.—A taxpayer enters into a three-year contract and upon completion of the contract, determines that annual taxable income under the contract using actual contract price and costs is $100,000, $150,000, and $250,000, respectively, for Years 1, 2, and 3 under the percentage of completion method. An electing taxpayer need not apply the look-back method to the contract if it had reported cumulative taxable income under the contract using estimated contract price and costs of between $90,000 and $110,000 as of the end of Year 1; and between $225,000 and $275,000 as of the end of Year 2.

Election not to reapply the look-back method

The bill provides that a taxpayer may elect not to reapply the look-back method with respect to a contract if, as of the close of any taxable year after the year the contract is completed, the cumulative taxable income (or loss) under the contract is within 10 percent of the cumulative look-back income (or loss) as of the close of the most recent year in which the look-back method was applied (or would have applied but for the other de minimis exception described above). In applying this rule, amounts that are taken into account after completion of the contract are not discounted.

Thus, an electing taxpayer need not apply or reapply the look-back method if amounts that are taken into account after the completion of the contract are de minimis.

The election applies to all long-term contracts completed during the taxable year for which the election is made and to all long-term contracts completed during subsequent taxable years, unless the election is revoked with the consent of the Secretary of the Treasury.

Example 2.—A taxpayer enters into a three-year contract and reports taxable income of $12,250, $15,000 and $12,750, respectively, for Years 1 through 3 with respect to the contract. Upon completion of the contract, cumulative look-back income with respect to the contract is $40,000, and 10 percent of such amount is $4,000. After the completion of the contract, the taxpayer incurs additional costs of $2,500 in each of the next three succeeding years (Years 4, 5, and 6) with respect to the contract. Under the bill, an electing taxpayer does not reapply the look-back method for Year 4 because the cumulative amount of contract taxable income ($37,500) is within 10 percent of cumulative look-back income as of the completion of the contract ($40,000). However, the look-back method must be applied for Year 5 because the cumulative amount of contract taxable income ($35,000) is not within 10 percent of cumulative look-back income as of the completion of the contract ($40,000). Finally, the taxpayer does not reapply the look-back method for Year 6 because the cumulative amount of contract taxable income ($32,500) is within 10 percent of contract look-back income as of the last application of the look-back method ($35,000).

Interest rates used for purposes of the look-back method

The bill provides that for purposes of the look-back method, only one rate of interest is to apply for each accrual period. An accrual period with respect to a taxable year begins on the day after the due date of the return (determined without regard to extensions) for the taxable year and ends on the due date of the return for the following taxable year. The applicable rate of interest is the overpayment rate in effect for the calendar quarter in which the accrual period begins.

Effective date

The provisions apply to contracts completed in taxable years ending after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Simplified method for applying uniform cost capitalization rules

PRESENT LAW

In general, the uniform cost capitalization rules require taxpayers that are engaged in the production of real or tangible personal property or in the purchase and holding of property for resale to capitalize or include in inventory the direct costs of the property and the indirect costs that are allocable to the property. In determining whether indirect costs are allocable to production or resale activities, taxpayers are allowed to use various methods so long as the method employed reasonably allocates indirect costs to production and resale activities.

HOUSE BILL

The House bill authorizes (but does not require) the Treasury Department to issue regulations that allow taxpayers in appropriate circumstances to determine the costs of any administrative, service, or support function or department that are allocable to production or resale activities by multiplying the total amount of costs of any such function or department by a fraction, the numerator of which is the amount of costs of the function or department that was allocable to production or resale activities for a base period and the denominator of which is the total amount of costs of the function or department for the base period. It is anticipated that the regulations will provide that the base period is to begin no earlier than 4 taxable years prior to the taxable year with respect to which this simplified method applies.

Effective date

The provision applies to taxable years beginning after the date of enactment of the bill. Thus, the regulations may permit the use of the simplified method for taxable years beginning after this date. The simplified method, however, may not be used for any taxable year that begins prior to the date that the Treasury Department publishes regulations that authorize the use of the simplified method and set forth the requirements that must be satisfied in order for the method to be used.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Treatment of certain amounts received by operators of licensed cotton warehouses

PRESENT LAW

A C corporation (other than a farm corporation) generally may not use the cash method of accounting if the corporation had average annual gross receipts for any prior 3-year period of more than

$5 million. Corporations that are denied the use of the cash method of accounting generally must use an accrual method of accounting.

HOUSE BILL

No provision in H.R. 11. However, H.R. 5643 as passed by the House, contains a provision identical to the provision in the Senate amendment.

SENATE AMENDMENT

The Senate amendment allows the election of a special rule in the case of any taxpayer that is an operator of a licensed cotton warehouse and uses an accrual method of accounting to compute taxable income. Under the election, the taxpayer is not required to accrue amounts to be received for processing or storing cotton at the licensed cotton warehouse until such amounts are actually received. For this purpose, the term "licensed cotton warehouse" means any warehouse for the storage of cotton that is licensed under the United States Warehouse Act (7 U.S.C. 241, et seq.) or under any similar State law.

In addition, under the election, if any deferred amount is received during any taxable year, the tax liability of the taxpayer for the taxable year is increased by an interest charge with respect to the deferred amount. The interest charge with respect to any deferred amount is determined: (1) on the amount of the tax for such taxable year which is attributable to the deferred amount; (2) for the period beginning on the due date for the taxable year of the deferral and ending on the due date for the taxable year in which such deferred amount is received; and (3) by using the Federal short-term rate in effect under section 1274 as of the due date for the taxable year in which such deferred amount is received (compounded semiannually).

The term "deferred amount" means any amount that is includible in gross income for the taxable year but that would have been includible in gross income for a prior taxable year but for this provision. The "taxable year of deferral" is the taxable year for which the deferred amount would have been includible in gross income but for this provision. The term "due date" means the date prescribed for filing the return of tax (without regard to extensions) for the taxable year.

Under the provision, the interest charge payable is to be taken into account in computing the amount of any deduction allowable as interest paid or accrued during the taxable year that the interest charge is payable. In addition, the interest charge is not treated as a tax for purposes of determining the taxpayer's regular tax liability under section 26.

The provision applies to a taxpayer only if the taxpayer makes an election to apply the provision. The election shall be made in a time and manner as prescribed by the Secretary of the Treasury. If made, the election applies to the taxable year for which made and all subsequent years unless revoked with the consent of the Treasury Secretary.

Effective date.—The provision applies to amounts accrued in taxable years beginning after December 31, 1991.

CONFERENCE AGREEMENT

The conference agreement follows the provision contained in H.R. 5463 and the Senate amendment.

H. PROVISIONS RELATING TO REGULATED INVESTMENT COMPANIES

1. Repeal the short-short test for regulated investment companies

PRESENT LAW

A regulated investment company ("RIC") generally is treated as a conduit for Federal income tax purposes. The Code provides conduit treatment by permitting a RIC to deduct dividends paid to its shareholders in computing its taxable income.

A RIC is a domestic corporation that, at all times during the taxable year, is registered under the Investment Company Act of 1940 as a management company or as a unit investment trust, or has elected to be treated as a business development company under that Act (sec. 851(a)).

In addition, to qualify as a RIC, a corporation must elect such status and must satisfy certain tests (sec. 851(b)). In particular, a corporation must derive less than 30 percent of its gross income from the sale or disposition of certain investments (including stock, securities, options, futures, and forward contracts) held less than three months (the "short-short test") (sec. 851(b)(3)).

HOUSE BILL

The House bill repeals the short-short test.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

2. Require brokers and mutual funds to report basis to customers

PRESENT LAW

Information returns

Brokers [1] are required to report to the Internal Revenue Service the gross proceeds from sales and exchanges by customers (sec. 6045(a)). Brokers also must give each customer a written statement containing that information by January 31 of the year following the calendar year the transaction occurred (sec. 6045(b)).[2]

[1] Under section 6045, "broker" is defined to include dealers, barter exchanges, and any other person who, for a consideration, regularly acts as a middleman with respect to property or services. Under the regulations, the term is defined to include mutual funds that deal directly with customers (i.e., mutual funds that stand ready to redeem their shares). The term "broker" has this meaning for purposes of this section.

[2] Brokers are required to use Form 1099-B, Statement for Recipients of Proceeds From Broker and Barter Exchange Transactions (or an IRS-authorized substitute) for these reporting purposes.

Gain or loss from the sale of mutual fund shares

A taxpayer who sells or exchanges mutual fund shares is required to report the gain or loss along with any other capital gains or losses. A taxable sale or exchange includes a direct redemption or sale, a check written on a fund, or exchanges from one fund into another fund.

The amount of gain or loss is the difference between the amount the taxpayer realized from the sale or exchange and the taxpayer's adjusted basis in the shares (sec. 1001). In general, the amount a taxpayer realizes from a sale or exchange of shares is the money and value of any property received for the shares minus expenses (such as sales commissions, sales charges, or exit fees). A taxpayer's adjusted basis generally is his original cost (including any sales charges or "load") or other basis adjusted for such things as wash sales and return of capital distributions.

A taxpayer who sells any of his shares may choose one of three methods to determine the adjusted basis of the shares that were sold (Treas. Reg. secs. 1.1012-1(c) and (e)):

(1) the first-in, first-out (FIFO) method which requires the taxpayer to assume that the first shares sold were the first ones purchased by the taxpayer;

(2) the specific identification method which permits the taxpayer to identify exactly which shares were sold—but the method is available only if, at the time of sale, the taxpayer specified to the broker the particular shares to be sold and the broker confirms such specification in a written document within a reasonable time after the sale; or

(3) the average cost method which permits the taxpayer to calculate his gain or loss based on the average price he paid for his shares. The average cost method may be determined either by the single category method (which uses the average cost of all of the taxpayer's shares and determines the holding period for the shares that are sold on a first-in first-out basis) or the double category method (which separates the taxpayer's shares into long-term and short-term holdings and provides a separate average cost for each category). A taxpayer may elect the average cost method by attaching a statement to his return. Once the taxpayer elects the average cost method, the taxpayer must use that method for all of his accounts in that fund.

House Bill

Information returns

In general.—The House bill requires brokers who are currently required to report gross proceeds on sales or exchanges of mutual fund shares to report basis and holding-period information on the same information return. Those brokers that are not currently required to report gross proceeds, such as money market mutual funds, are not required by the bill to report basis information.

Required basis information.—For each sale or exchange, a broker is required to report the basis of the shares that have been sold and the portion of the gross proceeds for the shares that have been held for more than one year. Basis is determined using the

single-category average cost basis method (and not the double-category). The bill also provides the Secretary of the Treasury authority to determine the manner in which basis and holding period are to be reported. Such authority includes the authority to require brokers to take into account wash sales, return of capital distributions, and other events that might affect a basis calculation. Such authority also includes the authority to permit brokers to report the basis information for each sale or exchange in an aggregate form.

Multiple accounts.—The bill requires the basis calculation to be done on an account-by-account basis. If an individual holds shares in two separate accounts with a mutual fund, then a separate basis calculation must be done for each account. In addition, if a customer holds shares in two mutual funds through a securities broker (rather than directly through the mutual funds themselves), the shares for each mutual fund (i.e., for each position) must be considered separate accounts for purposes of these rules.

Due date of returns.—Under the bill, information returns are required to be sent to shareholders by January 31, which is, under present law, the same date by which the information returns for gross proceeds must be provided to taxpayers. The bill contemplates that amended basis information returns may be necessary in certain cases (such as certain wash sales).

The Treasury Department is authorized to promulgate regulations to require a transfer of information between brokers (including RICs) where the transfer is necessary to comply with the reporting requirements of this section. For example, if a broker holds shares in a mutual fund as a nominee for another person and the shares are transferred to another broker, the old broker would be required to furnish the new broker the information necessary for the new broker to meet the information-reporting requirements.

Gain or loss from the sale of mutual fund shares

The House bill generally requires a taxpayer to calculate basis and adjustments to basis as under present law. However, unless a taxpayer elects otherwise, a taxpayer must determine basis for mutual fund shares by using the single-category average basis of all of the shares of the account from which a sale or exchange was made (which generally is the amount required to be reported by the broker).

Under the bill, a taxpayer can elect a method other than the single-category average basis (i.e., FIFO or specific identification) if he made such an election on his return for the first taxable year in which a sale from the account occurs (and he satisfied present law requirements). In addition, under the bill, a taxpayer can elect different methods for different accounts in the same fund.

Effective date.—The provision is effective for mutual fund shares held in accounts opened on or after January 1, 1994. For example, if prior to the effective date a taxpayer holds shares in mutual fund B in an account maintained by a securities broker and holds shares in mutual fund F directly from the fund, additions to either of those positions after January 1, 1994, would not trigger the basis reporting requirement. If, however, after January 1, 1994, the taxpayer purchased shares in mutual fund F through the secu-

rities broker, or through a new account opened with mutual fund F, a new position would have been opened and basis reporting would be required on that new position.

The provision is not applicable, however, to shares in an account that includes shares not acquired by purchase. Thus, the provision does not apply to shares in an account opened after January 1, 1994, that includes shares that had been acquired by gift. The basis in such shares is determined as under present law.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill except that the effective date is changed to accounts opened on or after January 1, 1995.

3. Permit common trust funds to convert to regulated investment companies without taxation

PRESENT LAW

A common trust fund is a fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, guardian, or custodian of certain accounts and in conformity with rules and regulations of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks (sec. 584(a)).

The common trust fund of a bank is not subject to tax and is not treated as a corporation (sec. 584(b)). Each participant in a common trust fund includes his proportional share of common trust fund income, whether or not the income is distributed or distributable (sec. 584(c)).

No gain or loss is realized by the fund upon admission or withdrawal of a participant. Participants generally treat their admission to the fund as the purchase of such interest. Withdrawals from the fund generally are treated as the sale of such interest by the participant (sec. 584(e)).

A regulated investment company (RIC) also is treated as a conduit for Federal income tax purposes. Present law is unclear as to the tax consequences when a common trust fund transfers its assets, or converts its status, to a RIC.

HOUSE BILL

In general, the House bill permits a common trust fund to transfer substantially all of its assets to a RIC without gain or loss being recognized by the fund or its participants. The fund must transfer its assets to the RIC solely in exchange for shares of the RIC, and the fund must then distribute the RIC shares to the fund's participants in exchange for the participant's interests in the fund.

In determining whether a transfer is solely in exchange for shares of the RIC, the assumption of liabilities by the RIC is to be ignored. A special rule, however, requires gain to be recognized to the extent the assumed liabilities exceed the aggregate adjusted bases (in the hands of the common trust fund) of the assets transferred to the RIC.

The basis of any asset that is received by the RIC will be the basis of the asset in the hands of the fund prior to transfer (increased by the amount of gain recognized by reason of the rule regarding the assumption of liabilities). In addition, the basis of any RIC shares that are received by a fund participant will be the participant's basis in the interests exchanged (increased by the amount of gain recognized by reason of the rule regarding the assumption of liabilities).

The tax-free transfer is not available to a common trust fund with assets that are not diversified (under the requirements of section 368(a)(2)(F)(ii).

Effective date.—The provision is effective for transfers after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill except with a modification to the diversification test so that the sec. 368(a)(2)(F)(ii) restriction would apply without regard to the exclusion requirements of sec. 368(a)(2)(F)(iv) and without including Government securities as securities of an issuer for purposes of the 25 and 50 percent tests. The tax-free transfer also is not available to any common trust fund that had previously received assets from a RIC in a tax-free transfer that is described below in the Senate amendment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill except that the diversification test is modified so that Government securities are not to be included as securities of an issuer and are to be included in determining total assets for purposes of the 25 and 50 percent tests of sec. 368(a)(2)(F)(ii).

The conferees do not intend any inference as to the tax consequences under present law when a common trust fund transfers its assets, or converts its status, to a RIC.

4. Permit a regulated investment company to convert to a common trust fund without taxation

PRESENT LAW

A regulated investment company (RIC) is treated as a conduit for Federal income tax purposes. There is a tax when a RIC transfers its assets, or converts its status, to a common trust fund.

HOUSE BILL

No provision.

SENATE AMENDMENT

In general, the Senate amendment permits a RIC to transfer substantially all of its assets to one common trust fund without gain or loss being recognized by the RIC or its shareholders. The RIC must transfer its assets to the common trust fund solely in exchange for interests in the common trust fund, and the RIC must then distribute the interests to the RIC's shareholders in exchange for the shareholder's shares in the RIC.

In determining whether a transfer is solely in exchange for interests in the common trust fund, the assumption of liabilities by the common trust fund is to be ignored. A special rule, however, requires gain to be recognized to the extent the assumed liabilities exceed the aggregate adjusted bases (in the hands of the RIC) of the assets transferred to the common trust fund.

The basis of any asset that is received by the common trust fund will generally be the basis of the asset in the hands of the RIC prior to transfer (increased by the amount of gain recognized by reason of the rule regarding the assumption of liabilities). In addition, the basis of any interests in a common trust fund that are received by a RIC shareholder will be the shareholder's basis in the shares exchanged (but not increased by the amount of gain recognized by reason of the rule regarding the assumption of liabilities).

The tax-free transfer is not available to a RIC with assets that are not diversified (under the requirements of section 368(a)(2)(F)(ii) without regard to the exclusion requirements of section 368(a)(2)(F)(iv) and without including Government securities as securities of an issuer for purposes of the 25 and 50 percent tests). The tax-free transfer also is not available to any RIC that had previously received assets from a common trust fund in a tax-free transfer that is described (above) in this new provision.

Effective Date.—The provision is effective for transfers after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except that the diversification test is modified so that Government securities are not to be included as securities of an issuer and are to be included in determining total assets for purposes of the 25 and 50 percent tests of sec. 368(a)(2)(F)(ii). In addition, the provision is available only to a RIC if, as of October 1, 1992, the majority of its shares are owned by fiduciary accounts that qualify for participation in common trust funds and the tax-free transfer may be made only through September 30, 1993.

The conferees do not intend any inference as to the tax consequences under present law when a RIC transfers its assets, or converts its status, to a common trust fund.

I. TAX-EXEMPT BOND PROVISIONS

Overview

Interest on State and local government bonds generally is excluded from gross income for purposes of the regular individual

and corporate income taxes if the proceeds of the bonds are used to finance direct activities of these governmental units (sec. 103).

Unlike the interest on governmental bonds, described above, interest on private activity bonds generally is taxable. A private activity bond is a bond issued by a State or local governmental unit acting as a conduit to provide financing for private parties in a manner violating either (a) a private business use and payment test or (b) a private loan restriction. However, interest on private activity bonds is not taxable if (a) the financed activity is specified in the Code and (b) at least 95 percent of the net proceeds of the bond issue is used to finance the specified activity.

Issuers of State and local government bonds must satisfy numerous other requirements, including arbitrage restrictions (for all such bonds) and annual State volume limitations (for most private activity bonds) for the interest on their bonds to be excluded from gross income.

1. Simplification of arbitrage rebate requirement for governmental bonds

PRESENT LAW

Subject to limited exceptions, arbitrage profits from investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. No rebate is required if the gross proceeds of an issue are spent for the governmental purpose of the borrowing within six months after issuance.

This six-month exception is deemed to be satisfied by issuers of governmental bonds (other than tax and revenue anticipation notes) and qualified 501(c)(3) bonds if (1) all proceeds other than an amount not exceeding the lesser of five percent or $100,000 are so spent within six months and (2) the remaining proceeds are spent within one year after the bonds are issued.

HOUSE BILL

The $100,000 limit on proceeds that may remain unspent after six months for certain governmental and qualified 501(c)(3) bonds otherwise exempt from the rebate requirement is deleted. Thus, if at least 95 percent of the proceeds of these bonds is spent within six months after their issuance, and the remainder is spent within one year, the six-month exception is deemed to be satisfied.

Effective date.—This provision applies to bonds issued after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Simplification of compliance with 24-month arbitrage rebate exception for construction bonds

PRESENT LAW

In general, arbitrage profits from investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. An exception is provided for certain construction bond issues if the bonds are governmental bonds, qualified 501(c)(3) bonds, or exempt-facility private activity bonds for governmentally owned property.

This exception is satisfied only if the available construction proceeds of the issue are spent at least at specified rates during the 24-month period after the bonds are issued. The exception does not apply to bond proceeds invested after the 24-month expenditure period as part of a reasonably required reserve or replacement fund, a bona fide debt service fund, or to certain other investments (e.g., sinking funds). Issuers of these construction bonds also may elect to comply with a penalty regime in lieu of rebating if they fail to satisfy the exception's spending requirements.

HOUSE BILL

The House bill exempts earnings on bond proceeds invested in bona fide debt service funds from the arbitrage rebate requirement and the penalty requirement of the 24-month exception if the spending requirements of that exception are otherwise satisfied.

Effective date.—This provision applies to bonds issued after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Simultaneous issuance of certain discrete issues not aggregated

PRESENT LAW

In certain cases, the Treasury Department treats multiple issues of tax-exempt bonds paid from substantially the same source of funds as a single issue in applying the Code's tax-exempt bond restrictions when the bonds are issued within a relatively short period of time.

HOUSE BILL

The House bill provides that discrete issues of governmental bonds issued simultaneously will not be treated as a single issue in cases where one of the issues is a TRAN reasonably expected to satisfy the arbitrage rebate safe harbor of Code section 148(f)(4)(B)(iii).

Effective date.—This provision applies to bonds issued after the date of enactment; no inference language is included with respect to bonds issued on or before that date.

Senate Amendment

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

4. Repeal of unrelated and disproportionate use limit

PRESENT LAW

Bonds issued by States and local governments are private activity bonds if (1) more than ten percent of the proceeds of the issue of which they are part satisfies a private business use and payment test or (2) more than five percent ($5 million, if less) of the proceeds is used to finance loans to persons other than States or local governments. The ten-percent private business limits are reduced to five percent in the case of uses that are unrelated to a governmental use also being financed with the proceeds of the issue (the "unrelated and disproportionate use limit").

HOUSE BILL

The House bill repeals the five-percent unrelated and disproportionate use limit.

Effective date.—This provision applies to bonds issued after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the provision of the House bill.

5. Simplification of arbitrage rebate requirement for smaller issuers of governmental bonds

PRESENT LAW

Subject to limited exceptions, arbitrage profits earned by investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. The rebate requirement does not apply to governmental bonds issued by issuers with general taxing powers if they issue $5 million or fewer of such bonds during the calendar year when the bonds are issued.

HOUSE BILL

The House bill increases the $5 million annual issuance limit for small issuers whose governmental bonds are not subject to rebate to $10 million.

Effective date.—This provision applies to bonds issued in calendar years beginning after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

6. Repeal of 150-percent of debt service limit

PRESENT LAW

Issuers of all tax-exempt bonds generally are subject to two sets of arbitrage restrictions on investment of their bond proceeds. The first set requires that tax-exempt bond proceeds be invested at a yield that is not materially higher (generally defined as 0.125 percentage points) than the bond yield. Exceptions are provided to this restriction for investments during any of several "temporary periods" pending use of the proceeds and, throughout the term of the issue, for proceeds invested as part of a reasonably required reserve or replacement fund or a "minor" portion of the issue proceeds.

Except for temporary periods and amounts held pending use to pay current debt service, present law also limits the amount of the proceeds of private activity bonds (other than qualified 501(c)(3) bonds) that may be invested at materially higher yields at any time during a bond year to 150 percent of the debt service for that bond year. This restriction affects primarily investments in reasonably required reserve or replacement funds. Present law further restricts the amount of proceeds from the sale of bonds that may be invested in these reserve funds to ten percent of such proceeds.

The second set of arbitrage restrictions requires generally that all arbitrage profits earned on investments unrelated to the governmental purpose of the borrowing be rebated to the Federal Government. Arbitrage profits include all earnings (in excess of bond yield) derived from the investment of bond proceeds (and subsequent earnings on any such earnings).

HOUSE BILL

The House bill repeals the 150-percent of debt service yield restriction.

Effective date.—This provision applies to bonds issued after the date of enactment.

SENATE AMENDMENT

No provision.

Conference Agreement

The conference agreement follows the House bill.

7. Clarification of definition of "investment-type property"

Present Law

Interest on State and local government bonds is not tax-exempt if the bonds are arbitrage bonds. A bond generally is an arbitrage bond if the proceeds are invested in materially higher yielding "investment-type property," other than during prescribed temporary periods or as a part of a reasonably required reserve or replacement fund. Additionally, all profits earned on investment of bond proceeds other than for the governmental purpose of the borrowing generally must be rebated to the Federal Government.

If issuers of tax-exempt bonds prepay amounts for activities being financed with the bonds, arbitrage profits may be indirectly earned and retained by the issuers. Therefore, present law provides that property or services acquired pursuant to most transactions involving prepayments is investment-type property, and is subject to either yield restriction or arbitrage rebate requirements.

House Bill

The House bill deletes and reinserts the term "investment-type property" in the Code arbitrage restrictions. This amendment is intended to clarify Congress' original intent as to the meaning of that term. Absent restrictions, issuers might use bond proceeds to prepay items in such a manner that the tax-exempt bond arbitrage restrictions would be avoided and the issuers would retain the economic benefit of arbitrage profits. The expansion of property subject to the Code arbitrage restrictions to include all "investment-type property" was intended to preclude such arrangements.

As was stated in the legislative history accompanying the Tax Reform Act of 1986 (the "1986 Act"), however, in certain circumstances, advance payments for property or services may be made because of non-arbitrage-motivated business customs. For example, a governmental unit may decide to purchase property (e.g., a government office building or equipment) with an accompanying bond-financed up-front payment rather than lease the property without such an initial debt issuance. It is not intended that the fact that an issuer purchases, rather than leases, property should necessarily be construed as giving rise to investment-type property.

Similarly, certain services (e.g., bond insurance for the entire term of the bonds) may be available only in exchange for a lump-sum payment made in advance, or the credit standing of an issuer may be such that vendors will not supply property or services before receiving payment. As was indicated in 1986, the term investment-type property is not intended to include property or services acquired in exchange for debt-financed lump-sum payments, whether or not discounted, that are dictated by independent, non-arbitrage-motivated business customs governing availability of the property or services to all similarly-situated persons (whether or not State or local governmental units).

Further, the amendment is intended to clarify the application of this 1986 Act restriction to certain governmental and section 501(c)(3) organization procurement activities. When States and local governments and section 501(c)(3) organizations purchase property or services for use in carrying out their governmental or exempt activities, they may be offered discounts on the same terms as fully taxable purchasers for prompt or early payment or for volume purchases. Availability of these discounts presents an opportunity for economic arbitrage, and by taking advantage of the discounts, States and local governments and section 501(c)(3) organizations could be viewed as acquiring investment-type property. The committee intends, however, that acquisition at a discounted price of property or services to be used in carrying out a governmental or section 501(c)(3) organization exempt activity should not be treated as the acquisition of investment-type property if—

(a) the trade discount is available on the same terms to all purchasers of the property or services (both governmental, section 501(c)(3) organization, and fully taxable nongovernmental entities); [1] and

(b) the scheduled or actual timing of any early payment or the volume of any purchase by a governmental unit or section 501(c)(3) organization is not substantially different from the comparable timing of payments or volume of purchases by similarly situated fully taxable nongovernmental entities purchasing the same property or services.

Effective date.—This provision is effective as if included in Title XIII of the Tax Reform Act of 1986.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill. The conferees wish to clarify, however, that the explanation relating to certain trade discounts contained in the agreement is intended only to address the treatment of the trade discounts described therein. It is not intended to change or otherwise give rise to any inference as to the proper meaning of the term "investment-type property" in other circumstances.

---

[1] Any trade discount which is structured differently for purchasers eligible to use taxable and tax-exempt debt or which is set at a level such that beneficiaries of tax-exempt bonds are more likely to take advantage of the discount than fully taxable purchasers (e.g., in a manner related to the tax-exempt borrowing costs of the purchaser) is not intended to qualify as a trade discount that is available on the same terms to all purchasers of the property or services.

The committee recognizes, however, that the implicit discount rate in any purchase arrangement is related to borrowing costs, and that therefore, beneficiaries of tax-exempt bonds may benefit economically more from any uniform discount rate than comparable taxable borrowers. This fact alone is not to be construed as violating the uniformity requirement, provided the discount rate is uniform for governmental, section 501(c)(3) organization, and fully taxable nongovernmental purchasers and is set at a sufficient level to be taken advantage of generally by purchasers using taxable financing as well as by governmental and section 501(c)(3) organizations benefiting from tax-exempt bonds.

8. *Expand exception to pro rata disallowance of bank interest expense related to investment in tax-exempt bonds*

PRESENT LAW

Banks and other financial institutions generally are denied a deduction for the portion of their interest expense (e.g., interest paid to depositors) that is attributable to investment in tax-exempt bonds acquired after August 7, 1986. This disallowance is computed use a pro-rata formula that compares the institution's average adjusted basis in tax-exempt bonds acquired after that date with the average adjusted basis of all assets of the institution.

An exception to the pro-rata disallowance rule is permitted for governmental bonds and qualified 501(c)(3) bonds issued by or on behalf of governmental units that issue no more than $10 million of such bonds during a calendar year (the "small-issuer exception").

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases from $10 million to $25 million the amount of governmental and qualified 501(c)(3) bonds that an entity may issue annually while qualifying those bonds for the small-issuer exception to the general bank interest disallowance rule.

The amendment also provides that pooled financing tax-exempt bonds (other than private activity bonds) may qualify for the small-issuer exception if—

(a) all of the proceeds of the pooled financing bonds (net of issuance costs associated with the bonds) are used exclusively to acquire from the issuer thereof bonds ("acquired bonds") eligible for the small-issuer exception,

(b) the acquired bonds are not designated under section 265(b)(3)(B)(i)(III) as "bank qualified" for purposes of the small-issuer exception; [2]

(c) the weighted average maturity of the pooled financing bonds does not exceed the weighted average maturity of the acquired bonds; and

(d) the issuer of the pooled financing bonds designates those bonds as "bank qualified" under section 265(b)(3)(i)(B)(III).

Effective date.—The provision is effective for bonds issued and acquired in calendar years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with a modification limiting the increase in the annual issuance limit for small issuers to $20 million (rather than $25 million).

---

[2] The acquired bonds are taken into account in determining how many bonds are reasonably expected to be issued by the borrowers from the pool in the calendar year in which they are issued.

9. Modification of rules governing qualified 501(c)(3) bonds

PRESENT LAW

Interest on State and local government bonds generally is excluded from income if the bonds are issued to finance direct activities of these governments (sec. 103). Interest on bonds issued by these governments to finance activities of other persons, e.g., private activity bonds, is taxable unless a specific exception is included in the Code. One such exception is for private activity bonds issued to finance activities of private, charitable organizations described in Code section 501(c)(3) ("section 501(c)(3) organizations") when the activities do not constitute an unrelated trade or business (sec. 141(e)(1)(G)).

Classification of section 501(c)(3) organization bonds as private activity bonds

Before enactment of the Tax Reform Act of 1986, States and local governments and section 501(c)(3) organizations both were defined as "exempt persons," under the Code bond provisions, and their bonds generally were subject to the same requirements. As exempt persons, section 501(c)(3) organizations were not treated as "private" persons, and their bonds were not "industrial development bonds" or "private loan bonds" (the predecessor categories to current private activity bonds).

Under present law, a bond is a private activity bond if its proceeds are used in a manner violating either (a) a private business test or (b) a private loan test. The private business test is a conjunctive two-pronged test. First, the test limits private business use of governmental bonds to no more than ten percent of the proceeds.[3] Second, no more than ten percent of the debt service on the bonds may be derived from private business users of the proceeds. The private loan test limits to the lesser of five percent or $5 million the amount of governmental bond proceeds that may be used to finance loans to persons other than governmental units.

Special restrictions on tax-exemption for section 501(c)(3) organization bonds

As stated above, present law treats section 501(c)(3) organizations as private persons; thus, bonds for their use may only be issued as private activity "qualified 501(1)(3) bonds," subject to the restrictions of Code section 145. The most significant of these restrictions limits the amount of outstanding bonds from which a section 501(c)(3) organization may benefit to $150 million. In applying this "$150 million limit," all section 501(c)(3) organizations under common management or control are treated as a single organization. The limit does not apply to bonds for hospital facilities, defined to include only acute care, primarily inpatient, organizations. A second restriction limits to no more than five percent the amount of the net proceeds of a bond issue that may be used to

[3] No more than five percent of bond proceeds may be used in a private business use that is unrelated to the governmental purpose of the bond issue. The ten percent debt service test, described below, likewise is reduced to five percent in the case of such "disproportionate" private business use.

finance any activities (including all costs of issuing the bonds) other than the exempt purposes of the section 501(c)(3) organization.

Legislation enacted in 1988 imposed low-income tenant occupancy restrictions on existing residential rental property that is acquired by section 501(c)(3) organizations in tax-exempt-bond-financed transactions. These restrictions require that a minimum number of the housing units comprising the property be continuously occupied by tenants having family incomes of 50 percent (60 percent in certain cases) of area median income for periods of up to 15 years. These same low-income tenant occupancy requirements apply to for-profit developers receiving tax-exempt private activity bond financing.

Other restrictions

Several restrictions are imposed on private activity bonds generally that do not apply to bonds used to finance State and local government activities. Many of these restrictions also apply to qualified 501(c)(3) bonds.

No more than two percent of the net proceeds of a bond issue may be used to finance the costs of issuing the bonds, and these monies are not counted in determining whether the bonds satisfy the requirement that at least 95 percent of the net proceeds of each bond issue be used for the exempt activities qualifying the bonds for tax-exemption.

The weighted average maturity of a bond issue may not exceed 120 percent of the average economic life of the property financed with the proceeds.

A public hearing must be held and an elected public official must approve the bonds before they are issued (or the bonds must be approved by voter referendum).

If property financed with private activity bonds is converted to a use not qualifying for tax-exempt financing, certain loan interest penalties are imposed.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment changes the tax-exempt bond provisions of the Code to conform generally the treatment of bonds for section 501(c)(3) organizations to that provided for bonds issued to finance direct State or local government activities. Certain restrictions, described below, that have been imposed on qualified 501(c)(3) bonds (but not on governmental bonds) since 1986, and that address specialized policy concerns, are retained.

Repeal of private activity bond classification for bonds for section 501(c)(3) organizations

The concept of an "exempt person" that existed in the bond provisions before 1986, is reenacted. An exempt person is defined as (a) a State or local governmental unit or (b) a section 501(c)(3) organization, when carrying out its exempt activities under Code

section 501(a). Thus, bonds for section 501(c)(3) organizations would no longer be classified as private activity bonds. However, financing for unrelated business activities of such organizations would continue to be treated as a private activity for which tax-exempt financing is not authorized.

As exempt persons, section 501(c)(3) organizations would be subject to the same limits as States and local governments on using their bond proceeds to finance private business activities or to make private loans. Thus, no more than ten percent of the bond proceeds [4] could be used in a business use of a person other than an exempt person if the Code security interest test is satisfied, and no more than five percent ($5 million if less) could be used to make loans to such "nonexempt" persons.

Repeal of most additional special restrictions on section 501(c)(3) organization bonds

Present Code section 145, which establishes additional restrictions on qualified 501(c)(3) bonds, is repealed, along with the restriction on bond-financed costs of issuance for section 501(c)(3) organization bonds (sec. 147(h)). This eliminates the $150-million-per-organization limit on nonhospital bonds for section 501(c)(3) organizations.

Retention of certain specialized requirements for section 501(c)(3) organization bonds

As stated above, the Senate amendment retains certain specialized restrictions on bonds for section 501(c)(3) organizations. First, the bill retains the requirement that existing residential rental property acquired by a section 501(c)(3) organization in a tax-exempt-bond-financed transaction satisfy the same low-income tenant requirements as similar housing financing for for-profit developers. Second, the amendment retains the present-law maturity limitations applicable to bonds for section 501(c)(3) organizations, and the public approval requirements applicable generally to private activity bonds. Third, the amendment continues to apply the penalties on changes in use of tax-exempt-bond-financed section 501(c)(3) organization property to a use not qualified for such financing.

Finally, the Senate amendment makes no amendments, other than technical conforming amendments, to the tax-exempt arbitrage restrictions, the alternative minimum tax tax-exempt bond preference, or the provisions generally disallowing interest paid by banks on monies used to acquire or carry tax-exempt bonds.

Effective date.—The Senate amendment applies to bonds issued after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

---

[4] This limit is reduced to five percent in the case of disproportionate private use as under the present-law governmental bond disproportionate private use limit.

10. Authority for Treasury Department to exempt certain taxpayers from tax-exempt interest reporting requirement

PRESENT LAW

Present law requires all individuals to report on their income tax returns the amount of interest on State and local government bonds they receive.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment authorizes the Treasury Department to provide exceptions to the requirement that taxpayers report interest on State and local government bonds on their Federal income tax returns in cases where the Secretary determines that such information is not useful to the administration of the tax laws.

Effective date.—This provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the provision of the Senate amendment.

11. Repeal of expired provisions

PRESENT LAW

Present law includes two special exceptions to the arbitrage rebate and pooled financing temporary period rules for certain qualified student loan bonds. This exception applied only to bonds issued before January 1, 1989.

HOUSE BILL

These special exceptions are deleted as "deadwood."

Effective date.—This provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

12. Bonds for the United Nations

PRESENT LAW

Interest on State and local government bonds generally is excluded from income for purposes of the regular individual and corporate income taxes if the proceeds of the bonds are used to fi-

nance direct activities of these governmental units. Present law also excludes the interest on State and local government bonds ("private activity bonds") when a governmental unit incurs debt as a conduit to provide financing for private parties, if the financed activities are specified in the Internal Revenue Code (the "Code"). Tax-exempt bonds may not be issued to finance private activities not specified in the Code.

Private activity bonds are bonds (1) more than 10 percent of the proceeds of which satisfy a private business use and payment test, or (2) more than five percent ($5 million, if less) of the proceeds are used to finance loans to persons other than State or local governmental units.

Under the tax-exempt bond rules, all persons and entities other than states and local governments are treated as private parties, eligible for financing only if specifically authorized. No such authorization exists for the United Nations or any other foreign government entity.

House Bill

No provision in H.R. 11 (However H.R. 5639 includes an identical provision to the Senate amendment).

Senate Amendment

The bill authorizes the issuance by a State or local government of tax-exempt private activity bonds when at least 95 percent of the net proceeds will be used to finance the construction or acquisition of real property used for offices (and functionally related and subordinate land and space for supporting activities) for use by the United Nations and its agencies and instrumentalities. These bonds will be subject to the State private activity bond volume limit of the State where the bonds are issued and to all other private activity bond rules (except the rehabilitation requirement on acquisition of existing property).

Effective Date

The provision applies to bonds issued after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

13. Treasury Department regulatory authority to integrate arbitrage rebate and yield restriction requirements

Present Law

In general

Interest on State and local government bonds generally is tax-exempt. Interest is not tax-exempt if the bonds are arbitrage bonds. Arbitrage bonds are bonds more than a minor portion of the proceeds of which is invested at a yield that is materially higher than the bond yield during periods other than prescribed "temporary periods." (Exceptions are provided for, *inter alia*, proceeds such as

those invested in a reasonably required reserve or replacement fund.)

Rebate requirement

In general, arbitrage profits earned on investments unrelated to the governmental purpose for which tax-exempt bonds are issued must be rebated to the Federal Government. This requirement primarily affects earnings during such periods and earnings on such specially treated proceeds as those invested as part of a reasonably required reserve or replacement fund (which are not subject to yield restriction).

For certain governmental and qualified 501(c)(3) bonds issued for construction projects, a special penalty alternative may be elected in lieu of complying with the rebate requirement. Under this elective regime, penalties are imposed unless set expenditure targets are met at six-month intervals. These expenditure targets are:

(1) at least 10 percent of the available construction proceeds of the bond issue must be spent within six months after the bonds are issued;

(2) at least 45 percent of those proceeds must be spent within 12 months after the bonds are issued;

(3) at least 75 percent of those proceeds must be spent within 18 months after the bonds are issued; and

(4) 100 percent (less certain allowable retainage) of those proceeds must be spent within two years after the bonds are issued.

Temporary periods

Regulatory temporary periods

In general, Treasury Department regulations prescribe the applicable temporary periods for bond proceeds. For most bonds, the initial temporary period is three years from the date on which the bonds are issued. An issuer qualifies for this unrestricted investment period only if the issuer reasonably expects to satisfy three tests:

(1) *Expenditure test.*—At least 85 percent of the spendable proceeds of the issue must be expected to be spent within three years after the bonds are issued.

(2) *Time test.*—A substantial binding commitment to commence with the project to be financed must be entered into within six months after the bonds are issued.

(3) *Due diligence test.*—After the binding commitment is entered into, work to complete the project must proceed with due diligence.

Treasury Department regulations also establish shorter temporary periods for special types of proceeds (e.g., loan repayments) and types of bonds (e.g., tax and revenue anticipation notes).

Statutory temporary periods

The Internal Revenue Code (the Code) provides specific temporary periods in three cases. First, the initial temporary period on pooled financing bonds is limited to six months, and the temporary period on repayments of loans financed with such bonds is limited

to three months.[5] Pooled financing bonds are bonds the proceeds of which are to be used to make loans to two or more persons.

Second, the Code provides that the initial temporary period for bonds that are advance refunded terminates no later than the date on which the refunding occurs. Third, the Code limits the initial temporary period on advance refunding bonds to 30 days.

Proposed and temporary Treasury Department regulations

On May 18, 1992, the Treasury Department issued proposed and temporary regulations which would allow most regulatory temporary periods to be extended indefinitely if (1) the bond proceeds were expended, determined after the fact, in a manner that actually qualified the bonds for the temporary period claimed by the issuer, and (2) all arbitrage profits on the bond issue were rebated to the Federal Government. For example, the three-year initial temporary period described above could be extended if the expenditure, time, and due diligence tests were actually complied with and arbitrage profits were rebated.

The proposed regulations do not apply to the three types of bonds for which statutory temporary periods are prescribed. Additionally, the proposed regulations do not apply to construction bond issues for which the penalty alternative to the rebate requirement is elected.

House Bill

No provision in H.R. 11 (However H.R. 5675 includes an identical provision as the Senate amendment.)

Senate Amendment

The bill provides the Treasury Department with express legislative authority to waive by regulation most statutory tax-exempt bond yield restriction requirements, provided that all arbitrage profits on the bond issue are rebated to the Federal Government. This authority does not extend to either (1) yield restriction of the proceeds of bonds involved in advance refunding transactions or (2) construction bond issues for which the special three-percent penalty-in-lieu-of-rebate penalty is elected.

The committee intends that the Treasury Department will give due consideration to regulatory action designed to preclude earlier or larger than necessary issuance of tax-exempt bonds or other abuse in this area. Specifically, the committee intends that the Treasury may impose "look-back" requirements, based on actual expenditures of bond proceeds, as a condition to waiving otherwise applicable yield restriction requirements. For example, the committee believes specifically that a look-back provision may be needed if the yield restriction requirement were waived for pooled financing bonds. If a look-back requirement were developed for these bonds, Treasury should look for guidance to the spend-down schedule set forth in the Code for certain construction bonds.

---

[5] This six-month period is increased to two years in the case of construction bonds subject to the special expenditure targets, described above, regardless of whether the issuer elects the penalty alternative to the rebate requirement.

In taking this action, the committee intends no inference as to the Treasury Department's authority in actions previously taken in its proposed regulations, described above.

EFFECTIVE DATE

The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include this provision of the Senate amendment.

J. INSURANCE PROVISIONS

1. Treatment of certain insurance contracts on retired lives

PRESENT LAW

Life insurance companies are allowed a deduction for any net increase in reserves and are required to include in income any net decrease in reserves. Special rules are provided in the case of a variable contract, providing that the reserve is adjusted by (1) subtracting any amount that has been added to the reserve by reason of appreciation in the value of assets underlying each contract, and (2) adding any amount that has been subtracted from the reserve by reason of depreciation in value of such assets.

A variable contract is defined as any annuity or life insurance contract (1) that provides for the allocation of all or part of the amounts received under the contract to an account that is segregated from the general asset accounts of the company, and (2) under which, in the case of an annuity contract, the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account, or, in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account. A pension plan contract that is not a life, accident, or health, property, casualty, or liability insurance contract is treated as an annuity contract for purposes of this definition.

HOUSE BILL

The House bill provides that a variable contract is to include a contract that provides for the funding of group term life or group accident and health insurance on retired lives if: (1) the contract provides for the allocation of all or part of the amounts received under the contract to an account that is segregated from the general asset account of the company; and (2) the amounts paid in, or the amounts paid out, under the contract reflect the investment return and the market value of the segregated asset account underlying the contract.

Effective date.—The provision applies to any contract issued after December 31, 1991. A taxpayer, however, may elect to apply the provision to all contracts issued before January 1, 1992 and during a taxable year for which the statute of limitations on the

assessment of tax has not expired as of the date of enactment of the bill.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment is effective for taxable years beginning after December 31, 1991.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Treatment of modified guaranteed contracts

PRESENT LAW

Life insurance companies are allowed a deduction for any net increase in reserves and are required to include in income any net decrease in reserves. The reserve of a life insurance company for any contact is the greater of the net surrender value of the contract or the reserve determined under Federally prescribed rules. The net surrender value of a contract is the cash surrender value reduced by any surrender penalty, except that any market value adjustment required on surrender is not taken into account. In no event, however, may the amount of the reserve for tax purposes for any contract at any time exceed the amount of the reserve for annual statement purposes.

In general, assets held for investment are treated as capital assets. Any gain or loss from the sale or exchange of a capital asset is treated as a capital gain or loss and is taken into account for the taxable year in which the asset is sold or exchanged.

HOUSE BILL

The House bill generally applies a mark-to-market regime to assets held as part of a segregated account under a modified guaranteed contract issued by a life insurance company. Gain or loss with respect to such assets held as of the close of any taxable year is taken into account for that year (even though the assets have not been sold or exchanged), and is treated as ordinary. The reserve for a modified guaranteed contract is determined taking into account the market value adjustment required on surrender of the contract.

A modified guaranteed contract is defined as any life insurance contract, annuity contract or pension plan contract [1] that is not a variable contract (within the meaning of Code section 817), and that satisfies the following requirements. First, all or a part of the amounts received under the contract must be allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time by reference to market values. Second, the contract

[1] The provision applies only to a pension plan contract that is not a life, accident or health, property, casualty, or liability contract.

must provide for a market value adjustment upon surrender of the contract.

The Treasury Department is authorized to issue regulations that provide for the application of the mark-to-market requirement at times other than the close of a taxable year or the last business day of a taxable year. The Treasury Department is also authorized to issue such regulations as may be necessary or appropriate to carry out the purposes of the provision and to provide for the treatment of modified guaranteed contracts under sections 72, 7702 and 7702A.

Effective date.—The provision applies to taxable years beginning after December 31, 1991. A taxpayer that is required to (1) change its calculation of reserves to take into account market value adjustments and (2) mark to market its segregated assets in order to comply with the requirements of the provision is treated as having initiated changes in method of accounting and as having received the consent of the Treasury Department to make such changes. The section 481(a) adjustments required by reason of the changes in method of accounting are to be combined and taken into account as a single net adjustment for the taxpayer's first taxable year beginning after December 31, 1991.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except for the following modifications.

A modified guaranteed contract is not required to provide for a market value adjustment upon surrender of the contract. Instead, the reserves for the contract must be valued at market for annual statement purposes.

In addition to the regulatory authority provided in the House bill, the Senate amendment authorizes the Treasury Department:

(1) to determine the interest rates applicable under sections 807(c)(3) and 807(d)(2)(B) with respect to modified guaranteed contracts annually, calculating such rates as appropriate for modified guaranteed contracts and using a method that approximates the yield on the assets underlying the contract;

(2) to the extent appropriate for such a contract, to modify or waive section 811(d);

(3) to provide rules limiting the ordinary treatment provided under the provision to gain or loss on those assets properly taken into account in calculating the reserve for Federal tax purposes (and necessary to support such reserves) for modified guaranteed contracts, and to provide rules for limiting such treatment with respect to other assets (such as assets representing surplus of the company).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the following modifications.

A modified guaranteed contract is defined as under the Senate amendment, except that a modified guaranteed contract includes only a contract that provides either for a net surrender value or for a policyholder's fund (within the meaning of section 807(e)(1)).

The Treasury regulatory authority to determine the interest rates applicable under sections 807(c)(3) and 807(d)(2)(B) is clarified to apply also to the interest rate applicable under section 812, and to provide that such rates are to be calculated as appropriate for modified guaranteed contracts. For example, it may be appropriate to take into account the yield on the assets underlying the contract in determining such rates.

The conferees intend that the mark-to-market treatment apply to all assets held as part of a segregated account established under the provision, even though ordinary treatment may not apply (pursuant to the Treasury regulatory authority granted under the Senate amendment) to assets held as part of the segregated account that are not necessary to support the reserve for modified guaranteed contracts.

The conference agreement authorizes the Treasury Department to prescribe regulations that provide for the treatment of assets transferred to or from a segregated account.

The conferees are concerned that taxpayers may exercise selective ordinary loss (or income or gain) recognition by virtue of the ordinary treatment under the provision. One example of selective ordinary loss recognition could arise if assets are always marked to marked when transferred out of the segregated account. For example, if at the beginning of the taxable year an asset in the segregated account is worth $1,000, but declines to $900 in July, the taxpayer might choose to recognize $100 of ordinary loss while continuing to own the asset, simply by transferring it out of the segregated account in July and replacing $1,000 of cash (for example) in the segregated account.

The conferees intend that the regulations relating to asset transfers will forestall opportunities for selective recognition of ordinary items. Prior to the issuance of these regulations, the conferees intend that the following rules apply.

If an asset is transferred to a segregated account, gain or loss attributable to the period during which the asset was not in the segregated account is taken into account when the asset is sold, and retains the character (as ordinary or capital) properly attributable to that period. Appropriate adjustments are made to the basis of the asset to reflect gain or loss attributable to that period.

If an asset is transferred out of a segregated account, the transfer is deemed to occur on the last business day of the taxable year and gain or loss with respect to the transferred asset is taken into account as of that day. Loss with respect to such transferred asset is treated as ordinary to the extent of the lesser of (1) the loss (if any) that would have been recognized if the asset had been sold for its fair market value on the last business day of the taxable year (or the date the asset was actually sold by the taxpayer, if earlier) or (2) the loss (if any) that would have been recognized if the asset had been sold for its fair market value on the date of the transfer. A similar rule applies for gains. Proper adjustment is made in the amount of any gain or loss subsequently realized to reflect gain or loss under the provision.

For example, assume that a capital asset in the segregated account that is worth $1,000 at the beginning of the year is transferred out of the segregated account in July at a value of $900, is

retained by the company and is worth $950 on the last business day of the taxable year. A $50 ordinary loss is taken into account with respect to the asset for the taxable year (the difference between $1,000 and $950). The asset is not marked to market in any subsequent year under the provision, provided it is not transferred back to the segregated account.

As an additional example, assume that a capital asset in the segregated account that is worth $1,000 at the beginning of the year is transferred out of the segregated account in July at a value of $900, is retained by the company and continues to decline in value to $850 on the last business day of the taxable year. A $100 ordinary loss ($1,000 less $900) and a $50 capital loss ($900 less $850) is taken into account with respect to the asset for the taxable year.

K. Cooperative Provisions

1. Discharge of indebtedness income from prepayment of REA loans

Present Law

Internal Revenue Code

Under section 501(c)(12) of the Code, a rural electric cooperative generally is exempt from Federal income tax if at least 85 percent of the cooperative's income is derived from members. Cancellation of indebtedness income generally must be taken into account in determining the percentage of a cooperative's income derived from members. Section 501(c)(12)(B)(iv) provides, however, that the 85-percent test is applied without regard to any cancellation of indebtedness income arising from the prepayment of a loan pursuant to sections 306A, 306B, or 311 of the Rural Electrification Act ("REA Act"), as in effect on January 1, 1987.

1990 Farm Act

Section 2387 of the Food, Agriculture, Conservation, and Trade Act of 1990 (the "1990 Farm Act") amended section 306B of the REA Act. Under such amendment, rural electric cooperatives that merge with another rural electric cooperative that previously prepaid REA loans under the 1988 or 1989 Budget Reconciliation Acts may prepay REA loans at a discount, provided the prepayment occurs within one year of such merger. Because this amendment occurred after January 1, 1987, the cancellation of indebtedness income arising from such prepayments would not be excluded in applying the 85-percent test under present law.

House Bill

No provision in H.R. 11. (However, section 109 of H.R. 2735 is substantially the same as the Senate amendment as described below, except that (1) it applies to the prepayment of REA loans under section 306B of the REA Act, as opposed to section 306B(b) of the REA Act, and (2) it does not contain certain conforming amendments made by the Senate amendment to section 501(c)(12)(B).)

SENATE AMENDMENT

The Senate amendment provides that the 85-percent test of section 501(c)(12) is applied without regard to cancellation of indebtedness income arising from the prepayment of REA loans under section 306B(b) of the REA Act, as in effect on January 1, 1991. For purposes of determining whether section 306B(b) of the REA Act remains in effect as of January 1, 1991, the renumbering of such subsection, the addition of a caption to such subsection, or any amendments to subsection 306B(a) shall be disregarded.

Effective date.—The provision is effective with respect to prepayments of REA loans made after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Treatment of certain amounts received by telephone cooperatives

PRESENT LAW

Mutual or cooperative telephone companies ("telephone cooperatives") are exempt from Federal income tax if 85 percent or more of their income consists of amounts collected from members for the sole purpose of meeting losses and expenses (sec. 501(c)(12)(A)). In applying this 85-percent test, certain income received by a telephone cooperative is disregarded, including income received from a nonmember telephone company for the performance of communication services which involve members of the telephone cooperative, certain pole rental income, and income from the sale of display listings in a telephone directory furnished to members of the telephone cooperative (sec. 501(c)(12)(B)).

Tax-exempt organizations generally are subject to the unrelated business income tax (UBIT) on income from a trade or business that is not substantially related to the organization's tax-exempt purposes. Under special rules, certain investment income (e.g., interest, dividends, royalties, and certain rents) generally is exempt from the UBIT, although some tax-exempt organizations, such as social clubs described in section 501(c)(7) and certain mutual benefit organizations, are subject to the UBIT on their investment income.

HOUSE BILL

No provision in H.R. 11. (However, section 108 of H.R. 2735 is identical to the Senate amendment as described below.)

SENATE AMENDMENT

The Senate amendment amends section 501(c)(12) to provide that 50 percent of the income received by a telephone cooperative from a nonmember telephone company for performing communication services—e.g., fees received for originating (or terminating) a long-distance call placed by (or to) a member—are treated as collected from members of the telephone cooperative for the sole purpose of meeting the losses and expenses of the telephone coopera-

tive.[1] The remaining 50 percent of income received by a telephone cooperative from a nonmember telephone company is, as under present law, excluded from the 85-percent test under section 501(c)(12)(B)(i).

The Senate amendment also excludes from the 85-percent test under section 501(c)(12) amounts received by a telephone cooperative from billing and collection services performed for another telephone company.[2]

In addition, the Senate amendment provides that telephone cooperatives will not lose their tax-exempt status under section 501(c)(12) if they earn certain investment "reserve income" in excess of 15 percent of their total income, but only if such reserve income (when added to other income not collected from members) does not exceed 35 percent of the cooperative's total income. For purposes of this provision, "reserve income" is defined as income that otherwise would be excluded from the UBIT under section 512(b) (e.g., interest and dividends) and that is set aside for the repair or replacement of telephone facilities of the cooperative. Under the provision, tax-exempt telephone cooperatives are subject to the UBIT on such reserve income between the 15-percent and 35-percent range.[3]

Effective date.—The provision is effective for amounts received or accrued after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Treatment of certain housing cooperatives

PRESENT LAW

Deductions by membership organizations

Under section 277(a), costs incurred by a "membership organization" attributable to furnishing services, insurance, goods or other items of value to its members are deductible in any taxable year only to the extent of any income the organization has derived from its members or transactions with members. Any excess deductions may be carried over and used to offset income from members in subsequent taxable years.

---

[1] Amounts received by a telephone cooperative from a nonmember telephone company (e.g., long-distance carrier) for performing communication services often are referred to as "access charges." Thus, under the Senate amendment, 50 percent of such access charges received by a telephone cooperative from another telecommunications company are treated as member-source income for purposes of the 85-percent test of section 501(c)(12).

[2] Telephone cooperatives (and other local telephone companies) often serve as billing and collection agents for other telecommunications companies. (That is, a telephone cooperative bills, and collects from, its members not only charges for local phone service provided by the cooperative but also charges for amounts owed to a long-distance carrier for the member's long-distance calls.) Telephone cooperatives are compensated for performing billing and collection services, generally by retaining a portion of the long-distance charges collected from members. Similar to the present-law treatment of certain pole rental income and directory listing (e.g., "yellow pages") revenue, the Senate amendment treats such billing and collection revenues as excluded from the 85-percent test under section 501(c)(12).

The Senate amendment provides that, for purposes of the UBIT, no inference is intended regarding the treatment of income from billing and collection services.

[3] Income that is not taken into account under section 501(c)(12)(B) likewise is disregarded for purposes of the 15-percent and 35-percent thresholds.

For purposes of section 277(a), the Tax Court has determined that interest earned by a housing cooperative on reserve accounts mandated by the Federal Housing Authority and the state development housing authority did not constitute "income derived * * * from members or transactions with members". (See *Concord Consumers Housing Cooperative v. Commissioner*, 89 T.C. 105 (1987)).[4] The Internal Revenue Service has held that section 277 applies to housing cooperatives,[5] while certain courts have held that section 277 does not apply to cooperatives that are subject to tax under subchapter T of the Code.[6] It is not clear whether housing cooperatives are subject to subchapter T.

Tax treatment of cooperatives

A cooperative is an organization, usually a corporation, which benefits its members and patrons by selling goods to them, purchasing products from them, and returning any income in excess of costs to them. A cooperative that is subject to subchapter T may exclude any patronage dividends paid to its members and patrons from its taxable income (sec. 1382). For a cooperative other than an "exempt cooperative",[7] a patronage dividend must be determined solely by reference to the net earnings of the organization from business done with or for its patrons. The Eighth Circuit has held that a nonexempt cooperative may not use patronage losses to offset nonpatronage income. See *Farm Services Cooperative v. Commissioner*, 611 F.2d 1270 (8th Cir. 1980).

HOUSE BILL

No provision in H.R. 11. (However, H.R. 5650 treats interest earned by any cooperative housing corporation (as defined in sec. 216(b)(1)) on its reasonable reserves (including reserves required by a government agency or lender) as income derived from transactions with members for purposes of section 277(a), provided that the cooperative housing corporation satisfies the requirements set forth in section 143(k)(9)(D)(i). The provision in H.R. 5650 applies to taxable years beginning after the date of enactment.

SENATE AMENDMENT

The Senate amendment clarifies that section 277 does not apply to a "cooperative housing corporation". [8] The Senate amend-

[4] The Tax Court did not address the interrelationship of sections 216, 277 and subchapter T because the record was insufficient to determine whether "petitioner [was] a 'cooperative housing corporation' within the meaning of section 216(b)(1) or that petitioner [was] 'operating on a cooperative basis' " within the meaning of section 1381(a)(2). *See* 89 T.C. at 106 n.3.

[5] See Rev. Rul. 90-36, 1990-1 C.B. 59.

[6] See *Landmark v. United States*, 92-1 Tax Cas. (CCH) para. 50,058 (Ct. Cl. 1992); *Farm Services Cooperative v. Commissioner*, 70 T.C. 145, 155-57, (1978), *rev'd on other grounds*, 611 F.2d 1270 (8th Cir. 1980).

[7] An "exempt cooperative" is a farmers' cooperative association described in section 521(b)(1). An exempt cooperative may allocate to its patrons and deduct, not only earnings from patronage activities, but also dividends on capital stock and earnings from nonpatronage sources (sec. 1382(c)).

[8] Under section 216(b)(1), a cooperative housing corporation generally is a corporation (i) that has one class of stock, (ii) each of the stockholders of which is entitled, solely by reason of ownership of stock, to occupy a dwelling owned or leased by the cooperative, (iii) no stockholder of which is entitled to receive any distribution not out of earnings and profits of the cooperative, and (iv) 80 percent or more of the gross income for the taxable year of which is derived from tenant-stockholders.

ment, however, adopts a rule in subchapter T similar to section 277 that patronage losses of a cooperative housing corporation cannot offset earnings that are not patronage earnings.

For this purpose, the Senate amendment specifically treats the following items as "patronage earnings": (1) interest on reasonable reserves established in connection with the cooperative housing corporation, including reserves required by a government agency or lender, (2) rents from laundry and parking to the extent attributable to use of the facilities by tenant-stockholders (as defined in section 216(b)(2)) and their guests, and (3) in the case of certain "limited equity cooperative housing corporations",[9] rental income attributable to housing projects operated by such corporations.

Effective date.—The Senate amendment applies to taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except for a technical modification. No inference is intended regarding whether any corporation operating on a cooperative basis (other than a cooperative housing corporation) is subject to section 277.

4. *Treatment of safe harbor leases of membership organizations*

PRESENT LAW

Deductions of membership organizations

Under section 277, a membership organization operated primarily to furnish services or goods to its members may deduct costs attributable to such operations only to the extent of income derived from members. In essence, section 277 prohibits using losses incurred from transactions with members to offset income derived from transactions with nonmembers.

Safe harbor leases

The Economic Recovery Tax Act of 1981 ("ERTA") provided rules intended to permit full utilization of tax benefits. Under these rules (known as the "safe harbor lease rules"), the putative "lessor" in the transaction was treated as the property owner for Federal income tax purposes (regardless of the transaction's economic substance) and thereby was entitled to cost recovery deductions and investment tax credits. Thus, a person (i.e., lessee) who complied with these rules could, by entering into a nominal sale and safe-harbor leaseback, effectively sell some of the tax benefits associated with the property, while retaining the benefits and burdens of ownership. The safe harbor lease rules were repealed by the Tax Equity and Fiscal Responsibility Act of 1982.

---

[9] Generally, a cooperative housing corporation is a "limited equity cooperative housing corporation" if the amount paid by a tenant stockholder for stock in the corporation cannot exceed the sum of (i) the consideration paid by the first tenant-stockholder, adjusted for cost of living, (ii) payments for improvements to the dwelling unit, and (iii) payments to amortize corporate indebtedness arising from the acquisition or development of real property (sec. 143(k)(9)(D)(i)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the interest income and rental expense from the sale and leaseback of property under a safe harbor lease are to be first netted and the difference allocated between members and nonmembers in proportion to the business done with each group.

Effective date.—The provision is effective for all taxable years beginning before, on, or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not adopt the Senate amendment.

L. OTHER SIMPLIFICATION PROVISIONS

1. Close partnership taxable year with respect to deceased partner, etc.

PRESENT LAW

The partnership taxable year closes with respect to a partner whose entire interest is sold, exchanged or liquidated. Such year, however, generally does not close upon the death of a partner. Thus, a decedent's entire share of items of income, gain, loss, deduction and credit for the partnership year in which death occurs is taxed to the estate or successor in interest rather than to the decedent on his or her final income tax return. *See Estate of Hesse* v. *Commissioner*, 74 T.C. 1307, 1311 (1980).

HOUSE BILL

The House bill provides that the taxable year of a partnership closes with respect to a partner whose entire interest in the partnership terminates, whether by death, liquidation or otherwise. The House bill is not intended to change present law with respect to the effect upon the partnership taxable year of a transfer of a partnership interest by a debtor to the debtor's estate (under Chapters 7 or 11 of Title 11, relating to bankruptcy).

Effective date.—Partnership taxable years beginning after December 31, 1991.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the provision is effective for partnership taxable years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. *Treatment of built-in losses for purposes of the corporate alternative minimum tax*

PRESENT LAW

For purposes of the regular corporate tax, if at the time of an ownership change, a corporation has a net operating loss or a net unrealized built-in loss, the use of such losses in post-change periods is limited. A corporation has a net unrealized built-in loss if the aggregate adjusted bases of the assets of the corporation exceed the fair market value of the assets immediately before the change of ownership (sec. 382).

For purposes of the adjusted current earnings (ACE) component of the corporate alternative minimum tax (AMT), if a corporation with a net unrealized built-in loss undergoes an ownership change in a taxable year beginning after 1989, the adjusted basis of each asset of such corporation generally is adjusted to each asset's fair market value (sec. 56(g)(4)(G)). This rule essentially eliminates, rather than limits, the use of built-in losses for ACE purposes. The net operating loss of a corporation, on the other hand, is not eliminated for AMT purposes after a change of ownership.

HOUSE BILL

The House bill repeals the ACE rule relating to the treatment of built-in losses after a change of ownership. Thus, for ACE purposes, the treatment of built-in losses would be similar to the treatment of net operating loss carryovers (in the same way that the treatment of built-in losses is similar to the treatment of net operating losses for regular tax purposes).

Effective date.—The provision is effective for changes of ownership occurring after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment is effective for changes of ownership occurring after December 31, 1991.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. *Authorization for Bureau of Land Management to use proceeds of Reforestation Trust Fund*

PRESENT LAW

The United States Treasury contains a Reforestation Trust Fund the proceeds of which are used by the Department of Agriculture for reforestation and timber stand improvement of lands in the national forest system and for related administrative costs. The amount transferred to the Reforestation Trust Fund for any fiscal year equals the amount collected during such year from custom tariffs on certain wood products, except that the maximum amount transferred for any fiscal year may not exceed $30 million.

House Bill

No provision.

Senate Amendment

The Senate amendment increases from $30 million to $45 million the maximum amount that may be transferred to the Reforestation Trust Fund for any fiscal year. The additional $15 million that is transferred to the Reforestation Trust Fund for any fiscal year is to be allocated and made available to the Department of the Interior for the reforestation, forest development, and forest conservation activities of the Bureau of Land Management and for related administrative costs.

Of the additional $15 million that is transferred to the Reforestation Trust Fund for any fiscal year, $14 million is to be allocated for Oregon and California Railroad and Coos Bay Wagon Road grant lands in Oregon. The remaining $1 million is to be allocated for public domain lands located in any State based on (in order of priority): (1) the level of timber sales (measured in board feet) during the previous calendar year from public domain lands located within the State; (2) the amount of reforestation backlog in the State; (3) the need for planting as part of the reforestation program; and (4) the need for forest development as part of the reforestation program.

The Senate amendment also provides that if the wood product tariffs are insufficient to provide an additional $15 million for any fiscal year, the Treasury Department is required to transfer to the Reforestation Trust Fund an amount equal to the shortfall in the wood product tariffs. In the case of any such shortfall in the wood product tariffs, 93-and-1/3 percent of the amount of the shortfall is to be taken from the Federal portion of the Bureau of Land Management timber receipt payments from the Coos Bay Wagon Road grant lands in Oregon and the remainder of the shortfall is to be taken from the Federal portion of the Bureau of Land Management timber receipt payments from public domain lands in the States.

Effective date.—The provision is effective on October 1, 1992.

Conference Agreement

The conference agreement adopts the Senate amendment.

4. Private foundation common investment fund (sec. 4564 of the bill and new sec. 501(n) of the Code)

Present Law

Code section 501(c)(3) requires that an organization be organized and operated exclusively for an exempt purpose in order to qualify for tax-exempt status under that section.

Section 501(f) provides that an organization is treated as organized and operated exclusively for charitable purposes if it is comprised solely of members that are educational institutions and is organized and operated solely to hold, commingle, and collectively invest (including arranging for investment services by independent contractors) in stocks and securities, the moneys contributed there-

to by the members, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members.

HOUSE BILL

No provision. (However, H.R. 2735 contains a provision that is substantially similar to the Senate amendment.)

SENATE AMENDMENT

The Senate amendment provides that a cooperative service organization comprised solely of members that are tax-exempt private foundations and community foundations [1] shall be treated as organized and operated exclusively for charitable purposes if: (1) it has at least 20 members; (2) no one member holds (after the organization's second taxable year) more than 10 percent (by value) of the interests in the organization; (3) it is organized [2] and controlled by its members, but no one member by itself controls the organization or any other member; (4) the members are permitted to dismiss any of the organization's investment advisors, if (following reasonable notice) members holding a majority of interest in the account managed by such advisor vote to remove such advisor; and (5) the organization is organized and operated solely to hold, commingle, and collectively invest (including arranging for investment services by independent contractors) in stocks and securities, the monies contributed by the members, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members.[3]

A cooperative service organization meeting the criteria of the proposed modification would be subject to the present-law excise tax provisions applicable to private foundations (e.g., sec. 4941 rules governing self-dealing arrangements), other than sections 4940 and 4942.[4] In addition, each member's allocable share (whether or not distributed) of the capital gain net income and gross investment income of the organization for any taxable year of the organization is treated, for purposes of the excise tax imposed under present-law

---

[1] For purposes of the provision, "community foundations" are a form of charitable trust or fund (which generally are established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area) as to which section 170(b)(1)(A)(vi) applies. See Treas. Reg. sec. 1.170A-9(e)(10).

It is intended that members will present the organization with verification of their status as tax-exempt private or community foundations at the time they become members (i.e., when they make an initial investment). The committee intends that a reasonable time period (such as 60 days) should be allowed for withdrawal by a member that subsequently ceases to qualify as a tax-exempt private or community foundation.

[2] It is intended that an organization in existence at the time of enactment will meet the requirement that it be "organized" by members if its initial board of directors or trustees are officers of private or community foundations that become members of the organization within a reasonable period after enactment of the bill.

[3] It is intended that an organization will be deemed to be organized and operated solely to collectively invest in stocks and securities if its income is derived solely from investing in stocks and securities, and ordinary and routine investments in connection with a stock and securities portfolio.

A cooperative service organization described in the provision qualifies for tax-exempt status under section 501(c)(3) only if the other applicable requirements of that section (e.g., prohibition of private inurement, political activities, and substantial lobbying) are satisfied.

[4] In addition, the Senate amendment provides that the present-law expenditure responsibility requirements of section 4945(d)(4)(B) will not apply to grants made by private foundations to the cooperative service organization and that such grants will be deemed to be qualifying distributions for purposes of 4942.

section 4940, as capital gain net income and gross investment income of the member for the taxable year of such member in which the taxable year of the organization ends.[5]

Effective date.—Taxable years ending on or after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

5. Determinations of gas produced from qualifying sources under the nonconventional fuels production credit

PRESENT LAW

Nonconventional fuels are eligible for a production credit ("the section 29 credit") equal to $3 per barrel or Btu oil barrel equivalent [1] (the credit amount generally is adjusted for inflation, except for gas produced from a tight formation). Qualified fuels must be produced domestically from a well drilled, or a facility placed in service, before January 1, 1993. The production credit is available for qualified fuels sold before January 1, 2003.

Qualified fuels include (1) oil produced from shale and tar sands, (2) gas produced from geopressured brine, Devonian shale, coal seams, a tight formation, or biomass (i.e., any organic material other than oil, natural gas, or coal (or any product thereof), and (3) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks. The amount of the credit is determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before 1980.

As a general rule, the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation is made in accordance with section 503 of the Natural Gas Policy Act of 1978 (the "NGPA").[2] The term "gas from a tight formation" means only gas from a tight formation which either, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the NGPA, as in effect on the date of enactment of the Omnibus Budget Reconciliation Act of 1990, or is produced from a well drilled after November 5, 1990.

Under section 503 of the NGPA,[3] if any State or Federal agency [4] makes any final determination that a well produces cer-

[5] Each member's allocable share of the organization's expenses are passed through to the member for purposes of determining the deductions allowed by section 4940(c)(3) in computing the member's net investment income.

[1] A barrel-of-oil equivalent generally means that amount of the qualifying fuel which has a Btu content of 5.8 million.

[2] P.L. 95-621, Nov. 9, 1978.

[3] 15 U.S.C. sec. 3413 (1988).

[4] Under the NGPA, a State or Federal agency having regulatory jurisdiction with respect to the production of natural gas is authorized to make determinations for qualifying under certain categories of natural gas. Such an agency, however, may waive its authority to make such determinations by entering into an agreement with FERC allowing FERC to be the determination-making body. (15 U.S.C. sec. 3413(c) (1988).)

tain "high-cost natural gas," [5] that determination is applicable unless it is reversed by the Federal Energy Regulatory Commission (FERC) under special procedures established under the NGPA.[6]

Under the regulatory authority granted to it by the NGPA, FERC has established the following definitions of certain types of high-cost natural gas. Natural gas produced from geopressured brine is natural gas which is dissolved before initial production of the natural gas in subsurface brine aquifers with at least 10,000 parts of dissolved solids per million parts of water and with an initial reservoir geopressure gradient in excess of 0.465 pounds per square inch for each vertical foot of depth.[7]

Occluded natural gas produced from coal seams means naturally occurring natural gas from entrapment from the fractures, pores and bedding planes of coal seams.[8]

Natural gas produced from Devonian shale means natural gas produced from fractures, micropores and bedding planes of shales deposited during the paleozoic Devonian Period. Shales deposited during such period are defined as either (1) the gross Devonian age stratigraphic interval encountered by a well bore, at least 95 percent of which has a gamma ray index of 0.7 or greater; or (2) generally, one continuous interval within the gross Devonian age stratigraphic interval, encountered by a well bore, as long as at least 95 percent of the selected Devonian shale interval has a gamma ray index of 0.7 or greater.[9] When measuring the Devonian age stratigraphic interval, the gamma ray index at any point is calculated by dividing the gamma ray log value at that point by the gamma log value at the shale base line established over the entire Devonian age interval penetrated by the well bore.

In general, guidelines for making a determination that a formation is a tight formation are as follows: (1) The estimated average *in situ* gas permeability, throughout the pay section, is expected to be 0.1 millidarcy or less; (2) the stabilized production rate, against atmospheric pressure, of wells completed for production in the formation, without stimulation, is not expected to exceed the production rate set forth by FERC in regulations; [10] and (3) no well drilled into the recommended tight formation is expected to produce, without stimulation, more than 5 barrels of crude oil per day.[11] The FERC regulations establishing a definition of tight formation also set forth determination and review requirements similar to those provided by the NGPA for high-cost natural gas.

Any Federal or State agency that makes a determination that a formation is a tight formation or that a well produces high-cost natural gas is required to provide timely notice in writing of such

---

[5] Under the NGPA, high-cost natural gas includes gas produced from geopressured brine, coal seams, or Devonian shale. In addition, the NGPA grants FERC the authority to treat other types of natural gas as high-cost natural gas if the gas is produced under such other conditions that FERC determines to present extraordinary risks or costs. Under this authority, FERC treats gas produced from a tight formation as high-cost natural gas. (15 U.S.C. sec. 3317(c) (1988).)

[6] 15 U.S.C. sec. 3413(a)(1) (1988).

[7] 18 C.F.R. sec. 272.103(c).

[8] 18 C.F.R. sec. 272.103(d).

[9] 18 C.F.R. sec. 272.103(e).

[10] *See* table in 18 C.F.R. sec. 271.703(c)(1)(B).

[11] 18 C.F.R. sec. 271.703(c).

determination to FERC.[12] The notice must include such substantiation and be in such a manner as FERC may, by ruling, require.

The NGPA provides that FERC will reverse any final State or Federal agency determination that a formation is a tight formation or that a well produces high-cost natural gas if (1) FERC finds that such determination is not supported by substantial evidence in the record upon which such determination was made; and (2) the preliminary finding and required notice thereof is made within 45 days after the date on which FERC received notice of the determination by the State or Federal agency and the final finding is made within 120 days after the date of the preliminary finding.[13] If (1) FERC finds that a State or Federal agency determination is not consistent with information contained in FERC's public records, and which is not part of the record upon which the State or Federal agency's determination was made, and (2) the preliminary finding by FERC and required notice thereof is made within 45 days after the date on which FERC received notice of the determination and the final finding is made within 120 days after the date of the preliminary finding, FERC may remand the matter to the State or Federal agency for consideration of such information.[14] If the agency, after consideration of the information transmitted to it by FERC, affirms its previous determination, such determination, as so affirmed, is subject to additional review by FERC. Such findings and remands by FERC may be subject to judicial review.[15]

In general, any final determination by a State or Federal agency (or by FERC) that a formation is a tight formation or that a well produces high-cost natural gas which is no longer subject to FERC or judicial review is thereafter binding with respect to such natural gas.[16]

In 1989, the Natural Gas Wellhead Decontrol Act[17] was enacted. That Act repealed Title I of the NGPA, effective on January 1, 1993. It also repealed FERC's determination review responsibility under section 503 of the NGPA. The legislative history to the 1989 legislation stated that the Senate Committee on Energy and Natural Resources did not intend, by repealing sections of the NGPA referenced in section 29 of the Internal Revenue Code, to reflect an adverse judgment as to the merits of the tax credits for any categories of natural gas production that might be affected by such action.[18] In view of this indication that Congress did not intend the 1989 legislation to limit the availability of the section 29 credit, FERC announced that it will continue to process well determinations until January 1, 1993, in order to allow producers to obtain tax credits that are dependent upon such determinations even if the gas has been otherwise decontrolled.[19] FERC has subsequently announced that it will continue to process well determina-

---

[12] 15 U.S.C. sec. 3413(a)(2) (1988).
[13] 15 U.S.C. sec. 3413(b)(1) (1988).
[14] 15 U.S.C. sec. 3413(b)(2) (1988).
[15] 15 U.S.C. sec. 3413(b)(4) (1988).
[16] 15 U.S.C. sec. 3413(d) (1988).
[17] P.L. 101-60, July 26, 1989.
[18] S. Rep. No. 101-39, 101st Cong., 1st Sess. 9 (1989).
[19] F.E.R.C. Order No. 523, 55 Fed. Reg. 17425, April 25, 1990.

tions received by June 30, 1993 if they are filed with jurisdictional agencies by December 31, 1992.[20]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that with respect to determinations required under the Internal Revenue Code of whether gas is produced from geopressured brine, Devonian shale, coal seams, or from a tight formation, in the event that such a determination is not made by the Federal Energy Regulatory Commission in accordance with section 503 of the Natural Gas Policy Act of 1978 due to the expiration of that statute, the Secretary of Treasury is required to make such determinations. For this purpose, the Senate amendment mandates that any such determination by the Treasury Department be based on the guidelines for making determinations set forth in the Natural Gas Policy Act of 1978 (and in regulations thereunder) prior to its repeal.

In addition, the Senate amendment clarifies that for purposes of the section 29 credit, the definitions of gas produced from geopressured brine, Devonian shale, coal seams, or from a tight formation are as established by the Federal Energy Regulatory Commission under the Natural Gas Policy Act of 1978 prior to repeal of provisions of that statute relating to such definitions.

Effective date.—Determinations not made by the Federal Energy Regulatory Commission as a result of the repeal of relevant provisions of the Natural Gas Policy Act of 1978.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

M. ESTATE AND GIFT TAX PROVISIONS

1. Waiver of right of recovery for certain marital deduction property

PRESENT LAW

For estate and gift tax purposes, a marital deduction is allowed for qualified terminable interest property (QTIP). Such property generally is included in the surviving spouse's gross estate. The surviving spouse's estate is entitled to recover the portion of the estate tax attributable to such inclusion from the person receiving the property, unless the spouse directs otherwise by will (sec. 2207A). For this purpose, a will provision specifying that all taxes be paid by the estate is presently sufficient to waive the right of recovery.

The gross estate includes the value of previously transferred property in which the decedent retains enjoyment or the right to income (sec. 2036). The estate is entitled to recover from the person receiving the property a portion of the estate tax attributable to

[20] F.E.R.C. Order No. 539, 57 Fed. Reg. 13009, April 15, 1992.

the inclusion (sec. 2207B). This right may be waived only by a provision in the will (or revocable trust) specifically referring to section 2207B.

House Bill

The House bill provides that the right of recovery with respect to QTIP is waived to the extent that language in the decedent's will or revocable trust specifically so indicates. Thus, a general provision specifying that all taxes be paid by the estate is no longer sufficient to waive the right of recovery. The House bill also provides that the right of contribution for property over which the decedent retained enjoyment or the right to income is waived by a specific indication, but specific reference to section 2207B would no longer be required.

Effective date.—The provision applies to decedents dying after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Inclusion in gross estate of certain gifts made within three years of death

Present Law

The first $10,000 of gifts of present interests to each donee during any one calendar year are excluded from Federal gift tax.

The value of the gross estate includes the value of any previously transferred property if the decedent retained the power to revoke the transfer (sec. 2038). The gross estate also includes the value of any property with respect to which such power is relinquished during the three years before death (sec. 2035). This rule has been interpreted to include in the gross estate certain transfers made from a revocable trust within three years of death.[1] Such inclusion subjects gifts that would otherwise qualify under the annual $10,000 exclusion to estate tax.

House Bill

The House bill provides that a transfer from a trust over which the grantor held the power to revoke would be treated as if made directly by the grantor. Thus, an annual exclusion gift from such trust is not included in the gross estate.

The House bill also revises section 2035 to improve its clarity.

Effective date.—The provision applies to decedents dying after the date of enactment.

---

[1] See, e.g., *Jalkut Estate* v. *Commissioner*, 96 T.C. 675 (1991) (transfers from revocable trust to permissible beneficiaries of the trust includible in the grantor's gross estate); LTR 9117003 (same).

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. It is intended that no inference be drawn from the provision with respect to the treatment of transfers from revocable trusts under present law.

3. Definition of qualified terminable interest property

PRESENT LAW

A marital deduction is allowed for qualified terminable interest property (QTIP). Property is QTIP only if the surviving spouse has a qualifying income interest for life (e.g., the spouse is entitled to all of the income from the property, payable at least annually). QTIP generally is includible in the surviving spouse's gross estate.

The United States Tax Court has held that, in order to satisfy the QTIP requirements, the income accumulating between the last distribution date and the date of the surviving spouse's death (the "accumulated income") must be paid to the spouse's estate or be subject to a power of appointment held by the spouse. See *Estate of Howard v. Commissioner*, 91 T.C. 329, 338 (1988), *rev'd*, 910 F.2d 633 (9th Cir. 1990). In contrast, proposed Treasury regulations presently provide that an income interest may constitute a qualifying income interest for life even if the accumulated income is not required to be distributed to the surviving spouse or the surviving spouse's estate. *See* Prop. Treas. Reg. secs. 20.2056(b)-7(c)(1), 25.2523(f)-1(b).

HOUSE BILL

Under the House bill, an income interest does not fail to be a qualified income interest for life solely because the accumulated income is not required to be distributed to the surviving spouse. Such income is includible in the surviving spouse's gross estate.

Effective date.—The provision applies to decedents dying, and gifts made, after date of enactment. However, the House bill does not include in the surviving spouse's gross estate property transferred before the date of enactment for which no marital deduction was allowed.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. It is intended that no inference be drawn from the provision with respect to the definition of a qualified income interest for life under present law.

4. Inclusion of property qualifying for the marital deduction in the gross estate

PRESENT LAW

A marital deduction against the estate and gift tax generally is permitted for the value of property passing between spouses. No marital deduction is permitted, however, if, upon termination of the spouse's interest, possession or enjoyment of the property passes to another person (the "terminable interest rule"). Certain exceptions to this rule may apply if the spouse receives a general power of appointment over, or an income interest in, a "specific portion" of property (sec. 2056(b)(5), (6), (7)). The spouse is subject to transfer tax on property over which he or she holds a general power of appointment.

A Treasury regulation defines a "specific portion" to be a fractional or percentage share of a property interest (Treas. Reg. sec. 20.2056(b)-5(c)). Finding this regulation invalid, courts have held that the term "specific portion" includes a fixed dollar amount. See *Northeastern Pennsylvania National Bank & Trust Co. v. United States*, 387 U.S. 213 (1967); *Estate of Alexander v. Commissioner*, 82 T.C. 34 (1984), *aff'd*, No. 8401600 (4th Cir. April 3, 1985). Under the court holdings, appreciation in certain marital deduction property may be includible in neither spouse's estate.

HOUSE BILL

The House bill provides that, for purposes of the marital deduction, a "specific portion" only includes a portion determined on a fractional or percentage basis. Thus, a trust does not qualify under the exceptions to the terminable interest rule unless the required income interest and general power of appointment are expressed as a fraction or a percentage of the property.

It is intended that no inference be drawn from the provision with respect to the definition of "specific portion" under present law. The House bill does not generally affect the marital deduction allowed for a pecuniary formula marital deduction bequest. See, e.g., Rev. Proc. 64-19, 1964-1 C.B. 682.

Effective date.—The provision generally applies to gifts made, and decedents dying, after date of enactment. The provision does not apply to a transfer under a will or revocable trust executed before the date of enactment if either (1) on that date the decedent was under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of death, or (2) the decedent dies within three years after the date of enactment. The provision applies, however, if the will or trust is amended after the date of enactment in any respect that increases the amount of the transfer qualifying for the marital deduction or alters the terms by which the interest passes.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement does not include either the House bill provision or the Senate amendment. (However, the conference agreement on H.R. 776 includes the same provision as contained in the House bill and the Senate amendment.)

5. Requirements for qualified domestic trust.

Present Law

A deduction generally is allowed for Federal estate tax purposes for the value of property passing to a spouse. The Technical and Miscellaneous Revenue Act of 1988 ("TAMRA") denied the marital deduction for property passing to a noncitizen spouse outside a qualified domestic trust ("QDT"). An estate tax is generally imposed on corpus distributions from a QDT.

TAMRA defined a QDT as a trust that, among other things, required all trustees be U.S. citizens or domestic corporations. This provision was modified in the Omnibus Budget Reconciliation Acts of 1989 and 1990 to require that at least one trustee be a U.S. citizen or domestic corporation and that no corpus distribution be made unless such trustee has the right to withhold any estate tax imposed on the distribution (the "withholding requirement").

House Bill

A trust created before the enactment of the Omnibus Budget Reconciliation Act of 1990 is treated as satisfying the withholding requirement if its governing instrument requires that all trustees be U.S. citizens or domestic corporations.

Effective date.—The provision applies as if included in the Omnibus Budget Reconciliation Act of 1990.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

6. Election of special use valuation of farm property for estate tax purposes

Present Law

For estate tax purposes, an executor may elect to value certain real property used in farming or other closely held business operations at its current use value rather than its highest and best use (sec. 2032A). A written agreement signed by each person with an interest in the property must be filed with the election.

Treasury regulations require that a notice of election and certain information be filed with the Federal estate tax return (Treas. Reg. sec. 20.2032A-8). The administrative policy of the Treasury Department is to disallow current use valuation elections unless the required information is supplied.

Under procedures prescribed by the Secretary of the Treasury, an executor who makes the election and provides substantially all of the information requested on the estate tax return but fails to provide all required information may supply the missing information within a reasonable period of time (not exceeding 90 days) after notification by the Secretary of the Treasury.

HOUSE BILL

The House bill extends the procedures allowing subsequent submission of information to any executor who makes the election and submits the recapture agreement, without regard to compliance with the Treasury regulations. Thus, the House bill allows the current use valuation election if the executor supplies the required information within a reasonable period of time (not exceeding 90 days) after notification by the IRS. During that time period, the House bill also allows addition of signatures to a previously filed agreement.

Effective date.—The provision applies to decedents dying after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

7. Income taxation of accumulation trusts

PRESENT LAW

In general

A nongrantor trust is treated as a separate taxpayer for Federal income tax purposes. Such trust is generally treated as a conduit with respect to amounts distributed currently and taxed as an individual with respect to undistributed income. The conduit treatment is achieved by allowing the trust a deduction for amounts distributed or required to be distributed to beneficiaries during the taxable year to the extent of distributable net income and by including the distributions in the beneficiaries' income.

Distributions of accumulated income

A distribution of previously accumulated income is taxed under the "throwback rules", which provide that beneficiaries are taxed on distributions of previously accumulated income from trusts in substantially the same manner as if the income had been distributed when earned or accrued.

Distributions of appreciated property

If property is sold within two years of its contribution to a trust, the gain that would have been recognized had the contributor sold the property is generally taxed at the contributor's marginal tax rates (sec. 644). In effect, section 644 treats such gains as if

the contributor had realized the gain and then transferred the net after-tax proceeds from the sale to the trust as corpus.

Treatment of multiple trusts

Under section 643(f), two or more trusts are treated as one trust if (1) the trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose for the existence of the trusts is the avoidance of Federal income tax. For trusts that were irrevocable as of March 1, 1984, section 643(f) applies only to subsequent contributions to corpus.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment exempts amounts distributed by domestic trusts after December 31, 1992, from the "throwback rules." It also provides that precontribution gain on property sold by a domestic trust is no longer taxed at the contributor's marginal tax rates. The provision does not apply to a trust created before March 1, 1984, unless the taxpayer establishes that the trust would not have been aggregated under the standard contained in section 643(f).

Effective date.—The change in the throwback rules applies to taxable years beginning after December 31, 1992. The modification in section 644 applies to sales or exchanges after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

8. Estate tax recapture from cash leases of specially valued property

PRESENT LAW

A Federal estate tax is imposed on the value of property passing at death. Generally, the value of property is its fair market value, i.e., the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

Under section 2032A of the Code, the executor may elect to value certain "qualified real property" used in farming or another qualifying trade or business at its current use value rather than its highest and best use. If, after the special use valuation election is made, the heir who acquired the real property ceases to use it in its qualified use within 10 years (15 years for individuals dying before 1982) of the decedent's death, an additional estate tax is imposed in order to "recapture" the benefit of the special use valuation.

Some courts have held that cash rental of specially valued property after the death of the decedent is not a qualified use and,

therefore, results in the imposition of the additional estate tax under section 2032A(c). *Martin v. Commissioner,* 783 F.2d 81 (7th Cir. 1986) (cash lease to unrelated party); *Williamson v. Commissioner,* 93 T.C. 242 (1989), *aff'd,* ——— F. 2d ——— (9th Cir.), 1992 U.S. App. Lexis 21175 (September 14, 1992) (cash lease to family member).

House Bill

No provision in H.R. 11. (However, section 123 of H.R. 2735 is substantially the same as the Senate amendment as described below, except that (i) permissible lessees are limited to any lineal descendant of a qualified heir (or to the spouse of such a lineal descendant), (ii) H.R. 2735 does not explicitly require that any permissible lessee continue to operate the farm or closely held business in its qualified use during the term of the lease, and (iii) the provision is effective for cash rentals occurring after the date of enactment.)

Senate Amendment

The Senate amendment provides that the cash lease of specially valued real property by a qualified heir to a "member of the family" (who continues to operate the farm or closely held business) does not cause the qualified use of such property to cease for purposes of imposing the additional estate tax under section 2032A(c).

Effective date.—The provision is effective for cash rentals after December 31, 1976.

Conference Agreement

The conference agreement follows the Senate amendment.

9. Interest rate on intra-familial loans made in connection with land sales

Present Law

Treatment of gift loans

In 1984, the U.S. Supreme Court held that interest-free demand loans made to a child by his parents constituted a transfer of property by gift and was subject to the gift tax. The amount of the gift was the reasonable value of the use of the money lent without charge, rather than the principal amount of the loan. See *Dickman v. Commissioner,* 465 U.S. 330 (1984).

Congress codified the *Dickman* holding in the Deficit Reduction Act of 1984 in section 7872, effective generally for term loans made after June 6, 1984, and demand loans outstanding after June 6, 1984. Under section 7872, a below-market interest rate loan (a "below-market loan") is recharacterized as an arm's length transaction in which the lender (i) made a loan to the borrower in exchange for a note requiring the payment of interest at the "applicable Federal rate" (as determined under section 1274(d)), and (ii) made a payment to the borrower equal to the amount of the interest "foregone" by the lender.

A demand loan is treated as a below-market loan if interest is payable at a rate below the applicable Federal rate. A term loan is a below-market loan if the amount of the loan exceeds the present value of all payments due under the loan (determined as of the date of the loan by using a discount rate equal to the applicable Federal rate). For this purpose, a demand loan is any loan which is payable in full at any time upon the demand of the lender and a term loan is any loan which is not a demand loan. With respect to gift loans that are term loans, however, the loan will be treated as a demand loan for income tax purposes and as a term loan for gift tax purposes (sec. 7872(d)(2)).

Land Transfers Between Related Parties

Under section 483 of the Code, a deferred payment contract will generally have unstated interest unless the interest rate provided in the debt instrument is at least equal to the applicable Federal rate. In determining the amount of unstated interest under section 483, a special six percent rate may be substituted for the applicable Federal rate with respect to certain land sales between family members (i.e., "qualified sales") to the extent that the sales price for such sale does not exceed $500,000 (sec. 483(e)). This special safe harbor rate does not apply, however, where any party to the sale is a nonresident alien individual.

Two United States Court of Appeals have recently divided as to whether the special six percent "safe-harbor" rate under section 483(e) could be applied in valuing an installment sales contract for estate and gift tax purposes. Compare *Ballard v. Commissioner*, 854 F.2d 185 (7th Cir. 1988)(holding that six percent rate under section 483(e) could be used for gift tax purposes) with *Krabbenhoft v. Commissioner*, 939 F.2d 529 (8th Cir. 1991)(holding that section 483(e) did not apply for gift tax purposes). See also *Frazee v. Commissioner*, 98 T.C. No. 37 (1992)(which adopts the holding in *Krabbenhoft*).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment amends section 7872 to provide that the special six percent safe harbor rate under section 483(e) applies for transfer tax purposes to loans made in connection with qualified sales. Accordingly, to the extent that the sales price for a qualified sale to a U.S. citizen or resident does not exceed $500,000, the applicable Federal rate for determining the total foregone interest or whether a loan is a below market loan shall not exceed 6 percent, compounded semiannually. It is not intended that any inference be drawn from the Senate amendment with respect to the application of section 483(e) under present law.

Effective date.—The Senate amendment applies with respect to interest accruing after July 31, 1993.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

N. EXCISE TAX PROVISIONS

1. Fuels tax provisions

a. Consolidate provisions imposing diesel and aviation fuel excise taxes

PRESENT LAW

Code section 4091 imposes a tax on the sale of diesel and aviation fuel by a "producer." The term producer generally includes refiners, compounders, blenders, and wholesalers who are registered with the Internal Revenue Service. The term also includes persons to whom diesel or aviation fuel has been sold tax-free.

As a backup, section 4041 imposes a tax on certain sales or uses of diesel and aviation fuel if a taxable sale of such fuel does not occur under section 4091.

HOUSE BILL

The House bill combines the diesel and aviation fuel tax provisions currently divided between Code sections 4041 and 4091 into a revised section 4091. The use of diesel and aviation fuel in a taxable use by producers will be taxed under section 4091, and the definition of producer is clarified to include purchasers in tax-reduced sales.

The bill also simplifies the Code by eliminating two unnecessary provisions, sections 4041(b)(1)(B) and (j) of the Code. These provisions are redundant.

Effective date.—The provision is effective for sales or uses on or after January 1, 1993.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

b. Permit refund of tax to taxpayer for diesel and aviation fuel resold to certain exempt purchasers

PRESENT LAW

As a general matter, purchasers who use tax-paid fuels for an exempt use are entitled to a refund or credit. Purchasers of tax-paid fuels generally are not permitted a refund or credit if they resell the fuels to another person who subsequently uses them in an exempt use.

However, persons who buy and then resell (a) fuel subject to the special motor fuel or gasoline taxes or (b) certain other articles

are permitted a refund or credit (in place of the ultimate users claiming the credit or refund) if they resell the fuel or article for use in the following exempt uses: (1) export, (2) supplies for aircraft or vessels, (3) use by a State or local government, or (4) use by a nonprofit educational organization for its exclusive use.

HOUSE BILL

The House bill allows a refund or credit to sellers of diesel and aviation fuel who purchase the fuels tax-paid and re-sell the fuels without payment of tax for any of the four exempt uses described above.

Effective date.—The provision is effective for sales on or after January 1, 1993.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

c. *Consolidate tax credit and refund provisions for fuel excise taxes*

PRESENT LAW

As a general matter, purchasers who use fuels for exempt uses are entitled to a refund if the fuels have been purchased tax-paid. The refund provisions for the fuels excise taxes are found in several sections of the Code.

In general, a purchaser entitled to a refund may file a quarterly refund claim for any of the first three quarters of the purchaser's tax year, if the claim exceeds a threshold dollar amount (with the lowest threshold being $750). The threshold amounts differ for different fuels and different exempt uses. A purchaser cannot file a quarterly claim for refund for its fourth quarter, but must file the claim as a credit on that year's income tax return.

There is an expedited procedure for gasohol blenders claiming a refund of part of the excise tax included in the price of the gasoline used for blending into gasohol.

Finally, only an income tax credit, and not a refund, may be claimed for excise taxes on gasoline and special motor fuel used on a farm for farming purposes.

HOUSE BILL

The House bill consolidates the user credit and refund provisions for the fuels excise taxes into one section of the Code. The bill also combines the three refund procedures for fuels taxes into a uniform refund procedure. The new uniform refund procedure permits an exempt user to aggregate its refund claims for all fuels taxes and file for a refund in any calendar quarter in which the amount of the aggregate claim exceeds $750. The uniform refund

procedure also permits such a user to file for a refund for its fourth quarter rather than apply for a credit.

The special expedited procedure for gasohol blenders is unchanged.

Effective date.—The provision is effective for sales on or after January 1, 1993.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

d. Repeal waiver requirement for fuel tax refunds for cropdusters and other fertilizer applicators

PRESENT LAW

In general, farmers who use gasoline and aviation fuel on farms are entitled to refunds of the taxes that have been paid on that fuel. Cropdusters and other fertilizer applicators that use gasoline and aviation fuel on farms are entitled to refunds of the taxes paid on that fuel in lieu of the farmers, but only if the owners or operators of the farms waive their right to refunds for such fuel.

HOUSE BILL

The House bill eliminates the waiver requirement for fuels tax refunds for cropdusters and other fertilizer applicators.

Effective date.—The provision is effective for fuels purchased on or after January 1, 1993.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

e. Authorize exceptions from information reporting for certain sales of diesel and aviation fuel

PRESENT LAW

Certain producers and importers and purchasers are required to file information returns for reduced-tax sales of diesel and aviation fuel.

HOUSE BILL

The House bill permits the Internal Revenue Service by regulation to provide exceptions to the mandatory information return requirement for certain sales of diesel and aviation fuel.

Effective date.—The provision applies to sales on or after January 1, 1993.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Provisions relating to distilled spirits, wines, and beer

PRESENT LAW

Refund on return to bonded premises of imported bottled distilled spirits

Present law provides that when tax-paid distilled spirits which have been withdrawn from bonded premises of a distilled spirits plant are returned for destruction or redistilling, the excise taxes are refunded (sec. 5008(c)). This provision does not apply to imported bottled distilled spirits because they are withdrawn from customs custody and not from bonded premises.

Bond for exported distilled spirits

Bond generally must be furnished to the Treasury Department when distilled spirits are removed from bonded premises for exportation without payment of tax. These bonds are cancelled or credited when evidence is submitted to the Department of the Treasury that the distilled spirits have been exported (sec. 5175(c)).

Distilled spirits plant records

Distilled spirits plant proprietors are required to maintain records of their production, storage, denaturation, and other processing activities on the premises where the operations covered by the records are carried on (sec. 5207(c)).

Transfers from breweries to distilled spirits plants

Under present law, beer may be transferred without payment of tax from a brewery to a distilled spirits plant to be used in the production of distilled spirits, but only if the brewery is contiguous to the distilled spirits plant (sec. 5222(b)).

Posting of sign by wholesale liquor dealers

Wholesale liquor dealers (i.e., dealers, other than wholesale dealers in beer alone, who sell distilled spirits, wines, or beer to other persons who re-sell such products) are required to post a sign conspicuously on the outside of their place of business indicating that they are wholesale liquor dealers (sec. 5115).

Refund of tax for wine returned to bond

Under present law, when unmerchantable wine is returned to bonded production premises, tax that has been paid is returned or credited to the proprietor of the bonded wine cellar to which the

wine is delivered (sec. 5044). In contrast, when beer is returned to a brewery, tax that has been paid is returned or credited, regardless of whether the beer is unmerchantable (sec. 5056(a)).

Use of ameliorating material in certain wines

The Code contains rules governing the extent to which ameliorating material (e.g., sugar) may be added to wines made from high acid fruits and the product still be labelled as a standard, natural wine. In general, ameliorating material may not exceed 35 percent of the volume of juice and ameliorating material combined (sec. 5383(b)(1)). However, wines made exclusively from loganberries, currants, or gooseberries are permitted a volume of ameliorating material of up to 60 percent (sec. 5384(b)(2)(D)).

Domestically produced beer for use by foreign embassies, etc.

Under present law, domestically produced distilled spirits and wine may be removed from bond, without payment of tax, for transfer to any customs bonded warehouse for storage pending removal for the official or family use of representatives of foreign governments or public international organizations (secs. 5066 and 5362(e)). (A similar rule also applies to imported distilled spirits, wine, and beer.) No such provision exists under present law for domestically produced beer.

Withdrawal of beer for destruction

Present law does not specifically permit beer to be removed from a brewery for destruction without payment of tax.

Records of exportation of beer

Present law provides that a brewer is allowed a refund of tax paid on exported beer upon submission to Treasury Department of certain records indicating that the beer has been exported (sec. 5055).

Transfer to brewery of beer imported in bulk

Imported beer brought into the United States in bulk containers may not be transferred from customs custody to brewery premises without payment of tax. Under certain circumstances, distilled spirits imported into the United States in bulk containers may be transferred from customs custody to bonded premises of a distilled spirits plant without payment of tax (sec. 5232).

HOUSE BILL

Return of imported bottled distilled spirits

The procedures for refunds of tax collected on imported bottled distilled spirits returned to bonded premises are conformed to the rules for domestically produced and imported bulk distilled spirits. Thus, refunds are available for all distilled spirits on their return to a bonded distilled spirits plant.

Bond for exported distilled spirits

For purposes of cancelling or crediting bonds furnished when distilled spirits are removed from bonded premises for exportation,

the Treasury Department is authorized to permit records of exportation to be maintained by the exporter, rather than requiring submission of proof of exportation to Treasury in all cases.

Distilled spirits plant records

Distilled spirits plant proprietors are permitted to maintain records of their activities at locations other than the premises where the operations covered by the records are carried on (e.g., corporate headquarters), provided that the records are available for inspection by the Treasury Department during business hours.

Transfers from breweries to distilled spirits plants

The House bill allows beer to be transferred without payment of tax from a brewery to a distilled spirits plant to be used in the production of distilled spirits, regardless of whether the brewery is contiguous to the distilled spirits plant. In the case of beer previously removed from a brewery, the House bill also provides that a transfer to a distilled spirits plant may occur without the beer being first retransferred to the brewery.

Posting of sign by wholesale liquor dealers

The requirement that wholesale liquor dealers post a sign outside their place of business indicating that they are wholesale liquor dealers is repealed.

Refund of tax for wine returned to bond

The House bill deletes the requirement that wine returned to bonded premises be "unmerchantable" in order for tax to be refunded to the proprietor of the bonded wine cellar to which the wine is delivered.

Use of ameliorating material in certain wines

The wine labelling restrictions are modified to allow any wine made exclusively from a fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry) to contain a volume of ameliorating material not in excess of 60 percent.

Domestically produced beer for use by foreign embassies, etc.

The House bill extends to domestically produced beer the present-law rule applicable to domestically produced distilled spirits and wine (and imported distilled spirits, wine, and beer) which permits these products to be withdrawn without payment of tax for the official or family use of representatives of foreign governments or public international organizations.

Withdrawal of beer for destruction

The House bill allows beer to be removed from a brewery without payment of tax for destruction, subject to Treasury Department regulations.

Records of exportation of beer

The House bill repeals the requirement that proof of exportation be submitted to the Treasury Department in all cases as a con-

dition of receiving a refund of tax. This proof will continue to be required to be maintained at the exporter's place of business.

Transfer to brewery of beer imported in bulk

The House bill extends the present-law rule applicable to distilled spirits imported into the United States in bulk containers to beer imported into the United States in bulk containers, so that imported beer may, subject to Treasury regulations, be withdrawn from customs custody for transfer to a brewery without payment of tax.

Effective date

These provisions of the bill generally are effective beginning 180 days after the date of enactment. The provision deleting the requirement that wholesale liquor dealers post a sign outside their place of business is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment

3. Other excise tax provisions

a. Authority for IRS to grant exemptions from registration requirements

PRESENT LAW

Under section 4222, certain sales of articles subject to Federal excise taxes may not be made without payment of tax unless the manufacturer, the first purchaser, and the second purchaser (if any) are all registered under regulations prescribed by the Secretary.

HOUSE BILL

The House bill allows the IRS to provide exemption from generally applicable excise tax registration requirements for certain classes of taxpayers.

Effective date.—The provision applies to sales after the 180th day after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

b. Repeal temporary reduction in tax on piggyback trailers

PRESENT LAW

Piggyback trailers and semitrailers sold within the one-year period beginning on July 18, 1984 were permitted a temporary reduction in the retail excise tax on trailers.

HOUSE BILL

The House bill repeals the temporary reduction in tax on piggyback trailers as "deadwood."

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

c. Expiration of excise tax on deep seabed minerals

PRESENT LAW

The Deep Seabed Mineral Resources Act (the "Resources Act," P.L. 96-283), imposed an excise tax on certain hard minerals mined on the deep seabed. The tax revenues were intended to fund obligations of the United States under a contemplated Law of the Sea Convention.

The tax was scheduled to terminate on the earlier of the date on which a U.N. international deep seabed treaty took effect with respect to the United States, or June 28, 1990 (10 years after the date of enactment of the tax). Because the United States did not sign the treaty, the excise tax provisions expired on June 28, 1990.

HOUSE BILL

The House bill deletes the deep seabed hard minerals excise tax provisions as "deadwood."

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

d. Firearms excise tax exemption for small manufacturers

PRESENT LAW

Present law imposes an 11-percent excise tax on the manufacture or importation of rifles and shotguns and on ammunition (shells and cartridges). Present law also imposes a 10-percent excise tax on the manufacture or importation of pistols and revolvers (sec. 4181).

Revenues from these taxes are appropriated, in the fiscal year following receipt, to the Federal Aid to Wildlife Program for support of State wildlife programs.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment exempts small manufacturers and importers from the 11-percent excise tax on firearms (rifles and shotguns) and ammunition and the 10-percent excise tax on pistols and revolvers, if the manufacturer or importer manufactures or imports fewer than 50 such articles per year.

Effective date.—The provision is effective for articles sold after September 30, 1983. In the case of any taxable year ending before the date of enactment, the period for claiming a credit or refund of any overpayment of tax resulting from the proposed exemption from tax will not expire before one year after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

e. Expanded definition of "wine spirits"

PRESENT LAW

Wine spirits authorized to be used in wine production are defined as brandy or wine spirits produced in a distilled spirits plant exclusively from fruit or fruit residues, wine or wine residues, or subject to Treasury regulations, special natural wines.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the definition of wine spirits to include alcohol produced from whey.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

f. Exemption for certain ferries from excise tax on ship passenger departures

PRESENT LAW

An excise tax of $3 per passenger is imposed on ship passenger departures on a "covered voyage." A covered voyage includes transportation on (1) a commercial passenger vessel which extends over one or more nights, or (2) a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States (i.e., more than 3 miles from shore), during which passengers embark or disembark the vessel in the United States. The latter circumstances includes such vessels that leave a U.S. port and return the same day.

The tax does not apply to either (1) a voyage on any vessel owned or operated by the United States or a State or local government (e.g., State or local government ferry boats), or (2) a voyage of less than 12 hours between two U.S. ports. A passenger vessel is any vessel having a berth or stateroom accommodations for more than 16 passengers. The tax is imposed only once on a passenger's covered voyage—either upon embarking or disembarking.

The tax on ship passengers was enacted in the Omnibus Budget Reconciliation Act of 1989, effective on January 1, 1990. Revenues from this tax go to the General Fund of the Treasury.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 5661 as passed by the House provides the same exemption for certain ferries as does the Senate amendment.)

SENATE AMENDMENT

The Senate amendment expands the current exemption from the ship passenger tax for voyages of less than 12 hours between two U.S. ports to also include ferry boat voyages of less than 12 hours between a port in the United States and a port outside the United States. For this purpose, the term "ferry boat" means any vessel if normally no more than 50 percent of the passengers on any voyage of such vessel return to the port where such voyage began on the first return of such voyage to such port.

Effective date.—The provision generally applies to voyages beginning after December 31, 1989. However, there will be no refunds of tax paid; and if tax has been collected from passengers, it will have to be remitted to the Government.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

g. Application of aircraft fuels excise tax or air passenger and air freight taxes to certain corporate aircraft

PRESENT LAW

Fuels taxes are imposed on fuels used by "noncommercial aviation" aircraft. For aviation gasoline, the tax is 15 cents per gallon,

and for nongasoline (jet) fuels, the tax is 17.5 cents per gallon. "Noncommercial aviation" means the use of an aircraft other than in a business of transporting persons or property for compensation or hire. The term also includes the use of an aircraft which is "properly allocable" to any transportation exempt from the air passenger or air freight taxes under sections 4281 of 4282.

Section 4281 exempts small aircraft (maximum certificated takeoff weight of 6,000 pounds or less) from the air passenger and air freight taxes, unless operated on an established line. Under section 4282, the air passenger and air freight taxes do not apply to transportation by air for other members of an "affiliated group" (as defined in sec. 1504(a), without any exclusions under sec. 1504(b)). In such cases where the air passenger or air freight taxes do not apply, the aircraft is subject to the fuels tax applicable to noncommercial aviation.

House Bill

No provision.

Senate Amendment

The Senate amendment clarifies the application of the aviation excise taxes to business aircraft used by corporate affiliated groups to require the Internal Revenue Service to apply the applicable taxes on a flight-by-flight basis for an affiliated group as for a stand alone corporation.

Effective date.—Date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

O. Compliance Provisions

1. General administrative provisions

a. Simplify employment tax reporting for household employees

Present Law

An employer who pays a household employee wages of $50 or more in a calendar quarter for household work must withhold social security taxes (including medicare taxes) from wages paid to the employee during the quarter. The employer must also pay an amount of tax that matches the tax withheld from the employee's wages. The employer must file an Employer's Quarterly Tax Return (Form 942) each quarter and a Wage and Tax Statement (Form W-2) at the end of the year.

In addition, an employer must pay Federal unemployment taxes if he or she paid cash wages to household employees totalling $1,000 or more in a calendar quarter in the current or preceding year. The employer must file an Employer's Annual Federal Unemployment Tax Return (Form 940 or Form 940–EZ) at the end of the year.

HOUSE BILL

The House bill changes the threshold for withholding and paying social security taxes with respect to domestic service employment from $50 a quarter to $300 a year. The bill requires an individual who employs only household employees (regardless of the amount of the remuneration) to report any social security or Federal unemployment tax obligation for wages paid to such employees on his or her income tax return for the year. The bill includes a household employer's social security and unemployment taxes in the estimated tax provisions. The bill also authorizes the Secretary to enter into agreements with States to collect State unemployment taxes in the same manner.

Effective date.—The provision is effective for remuneration paid in calendar years beginning after December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill. In addition, the Senate amendment provides general regulatory authority to the Treasury Department.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

b. Clarify that reproductions from digital images are reproductions for recordkeeping purposes

PRESENT LAW

Reproductions of a return, document, and certain other matters have the same legal status as the original for purposes of judicial and administrative proceedings. It is unclear whether reproductions made from digital images are also accorded the same legal status as originals.

HOUSE BILL

The House bill provides that the term reproduction includes a reproduction from a digital image. The bill also requires the Comptroller General to conduct a study of available digital image technology for the purpose of determining the extent to which reproductions of documents stored using that technology accurately reflect the data on the original document and the appropriate period for retaining the original document.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

c. Repeal of authority to disclose whether a prospective juror has been audited

PRESENT LAW

In connection with a civil or criminal tax proceeding to which the United States is a party, the Secretary must disclose, upon the written request of either party to the lawsuit, whether an individual who is a prospective juror has or has not been the subject of an audit or other tax investigation by the Internal Revenue Service (sec. 6103(h)(5)).

HOUSE BILL

The House bill repeals the requirement that the Secretary disclose, upon the written request of either party to the lawsuit, whether an individual who is a prospective juror has or has not been the subject of an audit or other tax investigation by the Internal Revenue Service.

Effective date.—The provision is effective for judicial proceedings pending on, or commenced after, the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

d. Repeal TEFRA audit rules for S corporations

PRESENT LAW

An S corporation generally is not subject to income tax on its taxable income. Instead, it files an information return and the shareholders report their pro rata share of the S corporation's income and deductions on their own tax returns.

The Subchapter S Revision Act of 1982 generally made the TEFRA partnership audit and litigation rules applicable to S corporations. These rules require the determination of all "Subchapter S items" at the corporate, rather than the shareholder, level. These rules also require a shareholder to report all Subchapter S items consistently with the corporation's information return or to notify the IRS of any inconsistency. Temporary regulations contain an exception from these rules for "small S corporations," i.e., those with five or fewer shareholders, each of whom is a natural person or an estate.

HOUSE BILL

The House bill repeals the unified audit procedures for S corporations. The bill retains, however, the requirement that shareholders report items in a manner consistent with the corporation's return.

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

e. Clarify statute of limitations for items from passthrough entities

PRESENT LAW

Passthrough entities (such as S corporations, partnerships, and certain trusts) generally are not subject to income tax on their taxable income. Instead, these entities file information returns and the entities' shareholders (or beneficial owners) report their pro rata share of the gross income and are liable for any taxes due.

Some believe that present law may be unclear as to whether the statute of limitations for adjustments that arise from distributions from passthrough entities should be applied at the entity or individual level (i.e., whether the 3-year statute of limitations for assessments runs from the time that the entity files its information return or from the time that a shareholder timely files his or her income tax return). (Compare *Fehlhaber v. Comm.*, 94 TC 863 (1990) and *Alan F. Bartol, et ux. v. Commissioner*, T.C. Memo 1992-141, with *Kelly v. Comm.*, 877 F.2d 7567 (9th Cir. 1989)).

HOUSE BILL

The House bill clarifies that the return that starts the running of the statute of limitations for a taxpayer is the return of the taxpayer and not the return of another person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

f. Simplify estimated tax payment rules for small corporations

PRESENT LAW

A corporation is subject to an addition to tax for any underpayment of estimated tax. A corporation does not have an underpayment of estimated tax if it makes four timely estimated tax payments each equal to at least 22.5 percent of its tax liability for the

current taxable year. In addition, a corporation that is not a "large corporation" may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of its tax liability for the preceding taxable year, so long as the preceding year was not a short taxable year and corporation filed a return showing a tax liability for such year. A large corporation may use this second rule only with respect to its estimated tax payment for the first quarter of its current taxable year. A large corporation is one that had taxable income of $1 million or more for any of the three preceding taxable years.

House Bill

The House bill provides that a small corporation (i.e., a corporation that is not a "large corporation" under present law) with no tax liability in the preceding taxable year may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of its tax liability for the second preceding taxable year. This rule will apply so long as (1) neither the preceding taxable year nor the second preceding taxable year was a short tax year, and (2) the corporation filed tax returns for both years. If the corporation satisfies these two requirements and did not have a tax liability for either of the two preceding taxable years, the corporation will not be required to make estimated tax payments for the current taxable year.

A large corporation may use this expanded safe harbor with respect to its estimated tax payment for the first quarter of its taxable year, as under present law. In addition, as under present law, a small corporation may continue to use the current taxable year rule for estimated tax purposes.

Effective date.—The provision is effective for taxable years beginning after the date of enactment of this Act.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

g. Interest rate on large corporate underpayments

Present Law

The interest rate on a large corporate underpayment of tax is the Federal short-term rate plus five percentage points. A large corporate underpayment is any underpayment by a subchapter C corporation of any tax imposed for any taxable period, if the amount of such underpayment for such period exceeds $100,000. The large corporate underpayment rate generally applies to periods beginning 30 days after the earlier of the date on which the first letter of proposed deficiency, a statutory notice of deficiency, or a nondeficiency letter or notice of assessment or proposed assessment is sent. For this purpose, a letter or notice is disregarded if

the taxpayer makes a payment equal to the amount shown on the letter or notice within that 30 day period.

HOUSE BILL

For purposes of determining the period to which the large corporate underpayment rate applies, any letter or notice will be disregarded if the amount of the deficiency, proposed deficiency, assessment, or proposed assessment set forth in the letter or notice is not greater than $100,000 (determined by not taking into account any interest, penalties, or additions to tax).

Effective date.—The provision is effective for purposes of determining interest for periods after December 31, 1990.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

2. Tax Court provisions

a. Clarify jurisdiction of Tax Court with respect to overpayment determinations

PRESENT LAW

The Tax Court may order the refund of an overpayment determined by the Court, plus interest, if the IRS fails to refund such overpayment and interest within 120 days after the Court's decision becomes final. Whether such an order is appealable is uncertain.

In addition, it is unclear whether the Tax Court has jurisdiction over the validity or merits of certain credits or offsets (e.g., providing for collection of student loans, child support, etc.) made by the IRS that reduce or eliminate the refund to which the taxpayer was otherwise entitled.

HOUSE BILL

The House bill clarifies that an order to refund an overpayment is appealable in the same manner as a decision of the Tax Court. The bill also clarifies that the Tax Court does not have jurisdiction over the validity or merits of the credits or offsets that reduce or eliminate the refund to which the taxpayer was otherwise entitled.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

b. Clarify procedures for administrative cost awards

PRESENT LAW

Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding.

No time limit is specified for the taxpayer to apply to the IRS for an award of administrative costs. In addition, no time limit is specified for a taxpayer to appeal to the Tax Court an IRS decision denying an award of administrative costs. Finally, the procedural rules for adjudicating a denial of administrative costs are unclear.

HOUSE BILL

The House bill provides that a taxpayer who seeks an award of administrative costs must apply for such costs within 90 days of the date on which the taxpayer was determined to be a prevailing party. The bill also provides that a taxpayer who seeks to appeal an IRS denial of an administrative cost award must petition the Tax Court within 90 days after the date that the IRS mails the denial notice.

The bill clarifies that dispositions by the Tax Court of petitions relating only to administrative costs are to be reviewed in the same manner as other decisions of the Tax Court.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill (with a technical correction).

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment (including the Senate technical correction).

c. Clarify Tax Court jurisdiction over interest determinations

PRESENT LAW

A taxpayer may seek a redetermination of interest after certain decisions of the Tax Court have become final by filing a petition with the Tax Court.

HOUSE BILL

The House bill provides that a taxpayer must file a "motion" (rather than a "petition") to seek a redetermination of interest in the Tax Court.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Clarify net worth requirements for awards of administrative or litigation costs

Present Law

Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding.

A person who substantially prevails must meet certain net worth requirements to be eligible for an award of administrative or litigation costs. In general, only an individual whose net worth does not exceed $2,000,000 is eligible for an award, and only a corporation or partnership whose net worth does not exceed $7,000,000 is eligible for an award. (The net worth determination with respect to a partnership or S corporation applies to all actions that are in substance partnership actions or S corporation actions, including unified entity-level proceedings under sections 6226 or 6228, that are nominally brought in the name of a partner or a shareholder.)

House Bill

The House bill provides that the net worth limitations currently applicable to individuals also apply to estates and trusts. The bill also provides that individuals who file a joint tax return shall be treated as one individual for purposes of computing the net worth limitations. Consequently, the net worths of both spouses are aggregated for purposes of this computation. An exception to this rule is provided in the case of a spouse otherwise qualifying for innocent spouse relief.

Effective date.—The provision applies to proceedings commenced after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Permit IRS to enter into cooperative agreements with state tax authorities

PRESENT LAW

The IRS is generally not authorized to provide services to non-Federal agencies even if the cost is reimbursed (62 Comp. Gen. 323,335 (1983)).

HOUSE BILL

The House bill provides that the Secretary is authorized to enter into cooperative agreements with State tax authorities to enhance joint tax administration. These agreements may include (1) joint filing of Federal and State income tax returns, (2) single processing of these returns, and (3) joint collection of taxes (other than Federal income taxes).

The bill provides that these agreements may require reimbursement for services provided by either party to the agreement. Any funds appropriated for tax administration may be used to carry out the responsibilities of the IRS under these agreements, and any reimbursement received under an agreement shall be credited to the amount appropriated.

No agreement may be entered into that does not provide for the protection of confidentiality of taxpayer information that is required by section 6103.

Effective date.—This provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

4. Other compliance provisions

a. Extension of authority for IRS undercover operations

PRESENT LAW

The Anti-Drug Abuse Act of 1988 exempted IRS undercover operations from certain statutory restrictions controlling the use of Government funds (which generally provide that all receipts be deposited in the general fund of the Treasury and all expenses be paid out of appropriated funds). In general, the exemption permits the IRS to "churn" the income earned by an undercover operation to pay additional expenses incurred in the undercover operation. The IRS is required to conduct a detailed financial audit of large undercover operations in which the IRS is churning funds and to provide an annual audit report to the Congress on all such large undercover operations. The exemption originally expired on December 31, 1989 and was extended by the Comprehensive Crime Control Act of 1990 to December 31, 1991.

HOUSE BILL

No provision.

SENATE AMENDMENT

The amendment extends the IRS's offset authority under section 7608(c) for three years, until September 1, 1995. The amendment also modifies the IRS's annual audit responsibility to cover any undercover operation (whether large or small) which involves offsetting under section 7608(c). Under the amendment, the requirements for the IRS annual audit report to Congress have been enhanced to also include the following data: (i) the date the operation was initiated, (ii) the total current expenditures and the amount and use of proceeds of the operation, (iii) a description of the undercover operation projected to generate proceeds, including the potential violation being investigated, and (iv) the results of the operation to date, including the results of criminal proceedings.

Effective date.—The provision is effective on January 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

b. Disclosure of returns on cash transactions

PRESENT LAW

Tax returns and return information are generally confidential, and may not be disclosed without statutory authorization (sec. 6103). Unauthorized disclosure is punishable by a fine, prison sentence or private lawsuit.

Under section 6050I, any person who receives more than $10,000 in cash in one transaction (or two or more related transactions) in the course of a trade or business generally must file an information return (Form 8300) with the IRS specifying the name, address, and taxpayer identification number of the person from whom the cash was received and the amount of cash received.

The Anti-Drug Abuse Act of 1988 provided a special rule permitting the IRS to disclose these information returns to other Federal agencies, for the purpose of administering Federal criminal statutes. The special rule originally was to expire after November 18, 1990 and was extended by the Comprehensive Crime Control Act of 1990 to November 18, 1992.

HOUSE BILL

No provision.

SENATE AMENDMENT

The amendment extends permanently the special rule for disclosing Form 8300 information. Moreover, the amendment permits disclosures not only to federal agencies but also to state, local and foreign agencies and for civil, criminal and regulatory purposes (i.e. generally in the same manner as CTRs filed by financial institutions under the Bank Secrecy Act.) Disclosure, however, may not

be made to any such agency for purposes of tax administration. The amendment also (i) extends the dissemination policies and guidelines under section 6103 to people having access to Form 8300 information and (ii) applies section 6103 sanctions to persons having access to Form 8300 information that disclose this information without proper authorization.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

c. Authority to accept signature alternatives

PRESENT LAW

In general, any return, statement, or other document required to be made under any provision of the internal revenue laws shall be signed in the manner required by the Secretary.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment permits the Secretary, on a trial basis, to provide for alternative methods for verifying, signing, and subscribing returns, declarations, statements, or other documents. Any return, declaration, statement, or other document verified, signed, or subscribed under any alternative method adopted by the Secretary shall be treated for all purposes in the same manner as verified by a handwritten signature. The amendment also requires that both IRS and GAO report to the Congress on the results of any trials conducted under this provision by December 31, 1995.

Effective date.—The authority is effective for 1993 through 1997.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the authority to conduct these trials is effective for 1993 through 1995. An additional report on the results of any trials must also be supplied by the Office of Technology Assessment. All of the reports are due by December 31, 1994.

V. TAXPAYER BILL OF RIGHTS 2

A. TAXPAYER ADVOCATE

1. Establishment of position of taxpayer advocate within Internal Revenue Service

PRESENT LAW

The Office of the Taxpayer Ombudsman was created by the IRS in 1979. The Taxpayer Ombudsman's duties are to serve as the

primary advocate, within the IRS, for taxpayers. As the taxpayers' advocate, the Taxpayer Ombudsman participates in an ongoing review of IRS policies and procedures to determine their impact on taxpayers, receives ideas from the public concerning tax administration, identifies areas of the tax law that confuse or create an inequity for taxpayers, and supervises cases handled under the Problem Resolution Program. Under current procedures, the Taxpayer Ombudsman is selected by the Commissioner of the IRS and serves at his discretion.

HOUSE BILL

The House bill establishes a new position, Taxpayer Advocate, within the IRS. This replaces the position of Taxpayer Ombudsman. The Taxpayer Advocate is to be nominated by the President, by and with the advice and consent of the Senate. The Taxpayer Advocate reports directly to the Commissioner. Compensation of the Taxpayer Advocate is at a level equal to that of the IRS Chief Counsel.

The House bill also establishes the Office of Taxpayer Advocate within the IRS. All problem resolution officers are part of that office, and are under the supervision and direction of the Taxpayer Advocate. The functions of the office are (1) to assist taxpayers in resolving problems with the IRS, (2) to identify areas in which taxpayers have problems in dealings with the IRS, (3) to propose changes (to the extent possible) in the administrative practices of the IRS that will mitigate those problems, and (4) to identify potential legislative changes that may mitigate those problems.

The Taxpayer Advocate is required to make two annual reports to the tax-writing committees. The first report is to contain the objectives of the Taxpayer Advocate for the next calendar year. This report is to contain full and substantive analysis, in addition to statistical information. This report is due not later than October 31 of each year.

The second report is on the activities of the Taxpayer Advocate during the previous fiscal year. The report must identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness, contain recommendations received from individuals who have the authority to issue a TAO, contain a summary of at least 20 of the most serious problems which taxpayers have in dealing with the IRS, describe in detail the progress made in implementing these recommendations, include recommendations for such administrative and legislative action as may be appropriate to resolve such problems, and to include other such information as the Taxpayer Advocate may deem advisable. The Commissioner is required to establish internal procedures that will ensure a formal IRS response to all recommendations submitted to the Commissioner by the Taxpayer Advocate.

Effective date.—The provision is effective on the date of enactment. The first annual reports of the Taxpayer Advocate are due in 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that: (1) the political appointment of the Taxpayer Advocate is eliminated, (2) the annual report regarding the Taxpayer Advocate's activities is due no later than June 30 of each year, and (3) the first annual reports are due in 1993, rather than 1992.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that (1) the annual report regarding the Taxpayer Advocate's activities is due no later than June 30 of each year, and (2) the first annual reports are due in 1993, rather than 1992. The reports of the Taxpayer Advocate shall be provided directly to the tax-writing committees without prior review or comment from the Commissioner of IRS, Department of the Treasury, or the Office of Management and Budget.

2. Expansion of authority to issue taxpayer assistance orders

PRESENT LAW

Section 7811(a) authorizes the Taxpayer Ombudsman to issue a Taxpayer Assistance Order (TAO). TAOs may order the release of taxpayer property levied upon by the IRS and may require the IRS to cease any action, or refrain from taking any action if, in the determination of the Taxpayer Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered.

HOUSE BILL

The House bill provides the Taxpayer Advocate with broader authority to affirmatively take any action with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws. For example, the Taxpayer Advocate's scope of power will specifically include (i) the authority to abate assessments, (ii) grant or expedite refund requests, and (iii) stay collection activity. The House bill also provides that a TAO may specify a time period within which the TAO must be followed. Finally, the House bill provides that only the Taxpayer Advocate, the Commissioner of the IRS, or a superior of those two positions, as well as a delegate of the Taxpayer Advocate, may modify or rescind a TAO.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that it specifically limits the actions which may be taken by the Taxpayer Advocate to those "permitted by law."

Conference Agreement

The conference agreement follows the Senate amendment. The Taxpayer Advocate is not intended to have the power to make determinations concerning the substantive tax treatment of any item.

B. Modifications to Installment Agreement Provisions

1. Notification of reasons for termination or denial of installment agreements

Present Law

Section 6159 authorizes the IRS to enter into written installment agreements with taxpayers to facilitate the collection of tax liabilities. In general, the IRS has the right to terminate (or in some instances, alter or modify) such agreements if the taxpayer provided inaccurate or incomplete information before the agreement was entered into, if the taxpayer fails to make a timely payment of an installment or another tax liability, if the taxpayer fails to provide the IRS with a requested update of financial condition, if the IRS determines that the financial condition of the taxpayer has changed significantly, or if the IRS believes collection of the tax liability is in jeopardy. If the IRS determines that the financial condition of a taxpayer that has entered into an installment agreement has changed significantly, the IRS must provide the taxpayer with a written notice that explains the IRS determination at least 30 days before altering, modifying or terminating the installment agreement. No notice is statutorily required if the installment agreement is altered, modified, or terminated for other reasons.

House Bill

The House bill requires the IRS to notify taxpayers 30 days before altering, modifying, or terminating any installment agreement for any reason other than that the collection of tax is determined to be in jeopardy. The IRS must include in the notification an explanation of why the IRS intends to take this action. The House bill also requires that the IRS notify taxpayers 30 days before denying any installment agreement for any reason other than that the collection of tax is determined to be in jeopardy.

Effective date.—The provision is effective six months after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. The conferees intend that notice of denial of an installment agreement be given to a taxpayer so that the taxpayer can discuss the denial with the IRS before it is formalized. Any insufficiency in the explanation of the denial has no effect on the availability of an installment agreement to the taxpayer.

2. Administrative review of denial of requests for, or termination of, installment agreements

PRESENT LAW

A taxpayer whose request for an installment agreement is denied can appeal to successively higher levels of Collection Division management, including the District Director. The IRS is currently testing an appeal process for various collection actions, including installment agreements, that will permit taxpayers to appeal these collection actions to Appeals Division personnel.

HOUSE BILL

The House bill requires the IRS to establish additional procedures for administrative review of denials of requests for installment agreements and terminations of installment agreements.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the effective date is January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Running of failure to pay penalty suspended during the period an installment agreement is in effect

PRESENT LAW

Section 6651 provides that a taxpayer is liable for a "failure to pay" penalty on late payments of tax. The penalty is imposed on the unpaid tax at the rate of one-half percent per month up to a maximum of 25 percent. The penalty applies to unpaid amounts without regard to whether the taxpayer is making payments pursuant to an installment agreement.

HOUSE BILL

The House bill suspends the application of the failure to pay penalty with respect to taxpayers who have installment agreements in effect and are meeting the conditions of the agreements.

Effective date.—The provision is effective for installment agreements entered into after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not adopt the House bill provision.

C. Interest

1. Expansion of authority to abate interest

Present Law

Any assessment of interest on any deficiency attributable in whole or in part to any error or delay by an officer or employee of the IRS (acting in his official capacity) in performing a ministerial act may be abated.

House Bill

The House bill expands the authority of the IRS to abate interest with respect to managerial acts, as well as ministerial acts.

Effective date.—The provision applies to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of enactment.

Senate Amendment

The Senate amendment permits the Internal Revenue Service to abate interest with respect to any unreasonable error or delay by an officer or employee of the IRS. Only taxpayers who meet the net worth requirements referenced in section 7430(c)(4)(A)(iii) are eligible for interest abatement. The Senate amendment has the same effective date as the House bill.

Conference Agreement

The conference agreement follows the House bill with respect to the addition of managerial acts, and follows the Senate amendment with respect to requiring that the error or delay be unreasonable. For purposes of this provision, "unreasonable" managerial or ministerial acts would include extensive delays resulting from: the loss of records by the IRS, IRS personnel transfers, extended illnesses, extended personnel training, or extended leave.

2. Extension of interest-free period for payment of tax after notice and demand

Present Law

In general, a taxpayer must pay interest on late payments of tax. An interest-free period of ten days is provided to taxpayers who pay the tax due within ten days of notice and demand.

House Bill

The House bill extends the interest-free period provided to taxpayers for the payment of the tax liability reflected in the notice from 10 days to 21 days, provided that the total tax liability shown on the notice of deficiency is less than $100,000.

Effective date.—The provision applies in the case of any notice and demand given after the date six months after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that a conforming amendment is made to section 6651(a)(3) to reflect the 21 day interest-free period.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except (1) for a technical modification to section 6651(a)(3) and (2) the provision applies to any notice and demand given after June 30, 1993.

D. JOINT RETURNS

1. Disclosure of collection activities with respect to joint returns

PRESENT LAW

The IRS does not disclose collection information to spouses that have filed a joint return.

HOUSE BILL

If a tax deficiency with respect to a joint return is assessed, and the individuals filing the return are no longer married or no longer reside in the same household, the House bill permits the IRS to disclose in writing (in response to a written request by one of the individuals) to that individual whether the IRS has attempted to collect the deficiency from the other individual, the general nature of the collection activities, and the amount (if any) collected.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Joint return may be made after separate returns without full payment of tax

PRESENT LAW

Taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded by statute from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability before the expiration of the three-year period for making the election to file jointly.

HOUSE BILL

The House bill repeals the requirement of full payment of tax liability as a precondition to switching from married filing separately status to married filing jointly status.

Effective date.—The provision applies to taxable years beginning after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

E. COLLECTION ACTIVITIES

1. Modifications to lien and levy provisions

i. Withdrawal of public notice of lien

PRESENT LAW

The IRS must file a notice of lien in the public record, in order to protect the priority of a tax lien. A notice of tax lien provides public notice that a taxpayer owes the Government money. The IRS has discretion in filing such a notice, but may withdraw a filed notice only if the notice (and the underlying lien) was erroneously filed or if the underlying lien has been paid, bonded, or become unenforceable.

HOUSE BILL

The House bill allows the IRS to withdraw a public notice of tax lien prior to payment in full by the indebted taxpayer if the Secretary determines that (1) the filing of the notice was premature or otherwise not in accordance with the administration procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability with respect to which the lien was filed, (3) the withdrawal of the lien will facilitate collection of the tax liability, or (4) the withdrawal of the lien would be in the best interests of the taxpayer and the United States (with the consent of the taxpayer or the Taxpayer Advocate). The House bill also requires that, at the written request of the taxpayer, the IRS makes reasonable efforts to give notice of the withdrawal of a lien to credit reporting agencies or financial institutions specified by the taxpayer.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that (1) the best interests of the taxpayer would be determined by the Taxpayer Advocate, (2) a copy of the notice of withdrawal must be provided to the taxpayer, (3) creditors are also included as par-

ties to whom notices must be sent (if specified by the taxpayer), and (4) notices are only required to be sent to financial institutions and creditors if their addresses have been supplied by the taxpayer to the IRS.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

ii. Return of levied property

PRESENT LAW

The IRS is authorized to return levied property to a taxpayer only when the taxpayer has overpaid its liability to tax, interest, and penalty.

HOUSE BILL

The House bill allows the IRS to return property (including money deposited in the Treasury) that has been levied upon if the Secretary determines that (1) the levy was premature or otherwise not in accordance with the administrative procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability, (3) the return of the property will facilitate collection of the tax liability, or (4) the return of the property would be in the best interests of the taxpayer and the United States (with the consent of the taxpayer or the Taxpayer Advocate).

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the determination whether the return of property would be in the best interests of the taxpayer is determined by the Taxpayer Advocate.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

iii. Modifications in certain levy exemption amounts

PRESENT LAW

Property exempt from levy includes personal property with a value of up to $1,650, and books and tools necessary for the taxpayer's trade, business, or profession with a value of up to $1,100.

HOUSE BILL

The House bill increases the exemption amounts to $1,700 for personal property and $1,200 for books and tools. Both these amounts are indexed for inflation commencing with calendar year 1994.

Effective date.—The provision is effective with respect to levies issued after December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that indexing commences on January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

2. Offers-in-compromise

PRESENT LAW

The IRS has the authority to settle a tax debt pursuant to an offer-in-compromise. IRS regulations provide that such offers can be accepted if the taxpayer is unable to pay the full amount of the tax liability and it is doubtful that the tax, interest, and penalties can be collected, or there is doubt as to the validity of the actual tax liability. Amounts over $500 can only be accepted if the reasons for the acceptance are documented in detail and supported by an opinion of the IRS Chief Counsel.

HOUSE BILL

The House bill allows acceptance of an offer-in-compromise where the compromise would be in the best interest of the Government. The House bill also increases from $500 to $50,000 the amount requiring a written opinion from the Office of Chief Counsel. Compromises below the $50,000 threshold must be subject to continuing quality review by the IRS.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Notification of examination

PRESENT LAW

In general, the IRS notifies taxpayers in writing prior to commencing an examination and encloses a copy of Publication 1, "Your Rights as a Taxpayer," with the notice. Sometimes, however, the IRS uses the telephone to schedule an examination.

HOUSE BILL

The House bill requires the IRS to notify a taxpayer in writing prior to commencing an examination under all subtitles of the Code and to provide the taxpayer with an explanation of the examination process prior to commencing the examination. Such notice will include an explanation of the process as described in section 7521. The House bill exempts from this requirement any examina-

tion with respect to which the Secretary determines (1) that it is in connection with a criminal investigation, (2) that the collection of the tax is in jeopardy, (3) that the requirements are inconsistent with national security needs, or (4) that the requirements would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity.

Effective date.—The House bill is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. This provision does not preclude the IRS from using the telephone to attempt to schedule an examination, so long as the written notice required by this provision has previously been given.

4. Modification of certain limits on recovery of civil damages for unauthorized collection activities

PRESENT LAW

A taxpayer may sue the United States for up to $100,000 of damages caused by an officer or employee of the IRS who, with respect to the collection of any Federal tax with respect to the taxpayer, recklessly or intentionally disregards provisions of the Code or the Treasury regulations promulgated thereunder.

HOUSE BILL

The House bill increases the cap to $1 million with respect to reckless or intentional acts.

Effective date.—The provision applies to actions by IRS employees that occur after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that it permits a taxpayer to sue the United States for up to $100,000 of damages caused by an IRS employee who, with respect to the collection of any Federal tax with respect to the taxpayer, negligently disregards the provisions of the Code or the Treasury regulations promulgated thereunder.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

5. Designated summons

PRESENT LAW

The period for assessment of additional tax with respect to most tax returns, corporate or otherwise, is three years. The IRS and the taxpayer can together agree to extend the period, either

for a specified period of time or indefinitely. The taxpayer may terminate an indefinite agreement to extend the period by providing notice to the IRS.

During an audit, the IRS may informally request that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate by providing the requested information on a timely basis. In some cases the IRS seeks information by issuing an administrative summons. Such a summons will not be judicially enforced unless the Government (as a practical matter, the Department of Justice) seeks and obtains an order for enforcement in Federal court. In addition, a taxpayer may petition the court to quash an administrative summons where this is permitted by statute.[1]

In certain cases, the running of the assessment period is suspended during the period when the parties are in court to obtain or avoid judicial enforcement of an administrative summons. Such a suspension is provided in the case of litigation over a third-party summons (sec. 7609(e)) or litigation over a summons regarding the examination of a related party transaction. Such a suspension can also occur with respect to a corporate tax return if a summons is issued at least 60 days before the day on which the assessment period (as extended) is scheduled to expire. In this case, suspension is only permitted if the summons clearly states that it is a "designated summons" for this purpose. Only one summons may be treated as a designated summons for purposes of any one tax return. The limitations period is suspended during the judicial enforcement period of the designated summons and of any other summons relating to the same tax return that is issued within 30 days after the designated summons is issued.

Under current internal procedures of the IRS, no designated summons is issued unless first reviewed by the Office of Chief Counsel to the IRS, including review by an IRS Deputy Regional Counsel for the Region in which the examination of the corporation's return is being conducted.

House Bill

The House bill requires that issuance of any designated summons with respect to a corporation's tax return must be preceded by review of such issuance by the Regional Counsel, Office of Chief Counsel to the IRS, for the Region in which the examination of the corporation's return is being conducted.

In addition, the House bill requires that the corporation whose return is in issue be promptly notified in writing in any case where the Secretary issues a designated summons (or another summons, the litigation over which suspends the running of the assessment period under the designated summons procedure) to a third party.

Effective date.—The provision applies to summonses issued after date of enactment.

---

[1] Petitions to quash are permitted, for example, in connection with the examination of certain related party transactions under section 6038A(e)(4), and in the case of certain third-party summonses under section 7609(b)(2).

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. The conferees expect that the IRS generally will meet the notice requirement by issuing a notice to the corporation on the same day that it issues the summons, and by transmitting such notice to the corporation in a manner reasonably designed to bring it to the prompt attention of an agent of the corporation responsible for communicating with the IRS in connection with the examination. The conferees do not intend the notice requirement to imply that any summons issued to an unrelated third party, the purpose of which is to obtain information regarding comparable transactions involving unrelated parties, would require disclosure to the taxpayer of any information relating to the unrelated third party that would otherwise remain confidential under any other provision of the law.

F. INFORMATION RETURNS

1. Phone Numbers of Person Providing Payee Statement Required to be Shown on Such Statement

PRESENT LAW

Information returns must contain the name and address of the payor.

HOUSE BILL

The House bill requires that information returns contain the name, address, and phone number of the payor's information contact.

Effective date.—The provision applies to statements required to be furnished after December 31, 1992 (determined without regard to any extension).

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment, except that the provision applies to statements required to be furnished after December 31, 1993 (determined without regard to any extension). A payor shall have the option of providing the payor's main office address, and the name and phone number of the department with the relevant information. The conferees intend that the telephone number provide direct access to individuals with immediate resources to resolve a taxpayer's questions in an expeditious manner.

2. *Civil Damages for Fraudulent Filing of Information Returns*

PRESENT LAW

Federal law provides no private cause of action to a taxpayer who is injured because a false or fraudulent information return has been filed with the IRS asserting that payments have been made to the taxpayer.

HOUSE BILL

The House bill provides that, if any person willfully files a false or fraudulent information return with respect to payments purported to have been made to another person, the other person may bring a civil action for damages against the person filing that return. Recoverable damages are limited to the greater of $5,000 or the amount of actual damages (including the costs of the action). An action seeking damages under this provision must be brought within six years after the filing of the false or fraudulent information return.

Effective date.—The provision applies to false or fraudulent information returns filed after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that (1) a copy of the complaint initiating the action must be provided to the IRS, (2) the court must specify in its judgment the correct amount (if any) that should have been reported on the information return, and (3) an action seeking damages under this provision must be brought within four years after the filing of the false or fraudulent information return, or one year after the false or fraudulent information would have been discovered by the exercise of reasonable care, whichever is later.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. *Requirement to Verify Accuracy of Information Returns*

PRESENT LAW

Deficiencies determined by the IRS are generally afforded a presumption of correctness.

HOUSE BILL

The House bill provides that, in any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return (Form 1099) filed by a third party and the taxpayer has fully cooperated with the IRS, the Government must, in presenting evidence of the deficiency based on the information return, present reasonable evidence of the deficiency (in addition to the information return itself). One way in which the taxpayer must cooperate with the IRS is to bring the reasonable dispute over the item of income to the attention of the IRS at the earliest possible time.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that (1) the Secretary must present "reasonable and probative information" concerning the deficiency (rather than "reasonable evidence"), (2) full cooperation is defined to include providing timely access to and inspection of all witnesses, information, and documents within the control of the taxpayer which are reasonably requested by the IRS, and (3) the citation to information returns is made more specific.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

G. MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

1. Preliminary notice requirements

PRESENT LAW

A "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected or paid to the government on a timely basis. An individual the IRS has identified as a responsible person is permitted an administrative appeal on the question of responsibility.

HOUSE BILL

The House bill requires the IRS to issue a notice to an individual the IRS had determined to be a responsible person with respect to unpaid trust fund taxes at least 60 days prior to issuing a notice and demand for the penalty. The statute of limitations shall not expire before the date 60 days after the date on which the notice was mailed. The provision does not apply if the Secretary finds that the collection of the penalty is in jeopardy.

Effective date.—The provision applies to failures occurring after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the statute of limitations shall not expire before the date 90 days after the date on which the notice was mailed.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the provision only applies to assessments made after June 30, 1993.

2. No penalty if prompt notification of IRS

PRESENT LAW

A responsible person may be subject to a penalty equal to 100 percent of the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

HOUSE BILL

The House bill provides that a responsible person who notifies the IRS within 10 days of the failure to pay over trust fund taxes to the Government is not liable for this penalty, so long as the notification is made prior to the IRS's contacting the business about the failure to pay over the taxes, and provided that the person is not a significant owner (of a 5-percent or more interest) or a highly compensated employee (with compensation in excess of $75,000).

Effective date.—The provision applies in the case of failures to collect and pay over tax that occur after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that: (1) the period for taxpayer notification is extended to 21 days, (2) the Senate amendment does not exclude highly compensated employees from application of the provision, (3) the provision does not apply if the failure to pay is part of a plan to defraud the Government, (4) the provision applies only once to a taxpayer in that taxpayer's lifetime and once to a business in its existence, and (5) the provision shall not apply if the effect would be to leave no financially responsible person liable for the penalty.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that: (1) the provision does not apply if the failure to pay is part of a plan to defraud the Government, (2) the provision applies only once to a taxpayer in that taxpayer's lifetime and once to a business in its existence, and (3) the provision shall not apply if the effect would be to leave no financially responsible person liable for the penalty.

3. Disclosure of certain information where more than one person subject to penalty

PRESENT LAW

The IRS may not disclose to a responsible person the IRS's efforts to collect unpaid trust fund taxes from other responsible persons, who may also be liable for the same tax liability.

HOUSE BILL

The House bill requires the IRS, if requested in writing by a person considered by the IRS to be a responsible person, to disclose in writing to that person the name of any other person the IRS has determined to be a responsible person with respect to the tax liability. The IRS is required to disclose in writing whether it has at-

tempted to collect this penalty from other responsible persons, the general nature of those collection activities, and the amount (if any) collected.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. Failure by the IRS to follow this provision does not absolve any individual for any liability for this penalty.

4. Penalties relating to failure to collect and pay over tax

i. Public information requirements

PRESENT LAW

Under section 6672, a "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

HOUSE BILL

The House bill requires the IRS to print warnings on payroll tax deposit coupon books and appropriate tax returns indicating that certain employees may be liable for this penalty, and to develop a special information packet relating to this penalty.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

ii. Board members of tax-exempt organizations

PRESENT LAW

Under section 6672, "responsible persons" of tax-exempt organizations are subject to a penalty equal to the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

HOUSE BILL

The House bill clarifies that the section 6672 responsible person penalty is not to be imposed on volunteer, unpaid members of any board of trustees or directors of a tax-exempt organization to the extent such members are solely serving in an honorary capacity and do not participate in the day-to-day or financial activities of

the organization. The House bill requires the IRS to develop materials to better inform board members of tax-exempt organizations (including voluntary or honorary members) that they may be treated as responsible persons. The IRS is required to make such materials routinely available to tax-exempt organizations. The House bill also requires the IRS to clarify its instructions to IRS employees on application of the responsible person penalty with regard to honorary or volunteer members of boards of trustees or directors of tax-exempt organizations.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that, to be exempt, an honorary board member cannot have actual knowledge of the failure to deposit taxes and the provision may not operate in such a way as to eliminate all responsible persons from responsibility.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

iii. Prompt notification

PRESENT LAW

The IRS is not required to notify promptly taxpayers who fall behind in depositing trust fund taxes.

HOUSE BILL

The House bill requires the IRS, to the maximum extent practicable, to notify all taxpayers with delinquent trust fund deposits within 30 days of the first indication that there has been a failure to make a timely and complete deposit.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that (1) the notice requirement is limited to delinquent taxes described under section 6672 of the Code, and (2) notification must be within 30 days after the return was filed reflecting the delinquency or within 30 days of the first indication that there has been a failure to make a timely and complete deposit, whichever is earlier. The provision also requires that a taxpaying entity notified by the Secretary of a failure to pay such taxes must notify, within 15 days of such notification by the Secretary, all of the entity's officers, general partners, trustees or other managers of the failure to make a timely and complete deposit.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. Failure by the IRS to provide notice under this provision does not absolve any individual from any liability for penalties.

H. AWARDING OF COSTS AND CERTAIN FEES

1. Motion for disclosure of information

PRESENT LAW

A taxpayer that successfully challenges a determination of deficiency by the IRS may recover attorneys' fees and other administrative and litigation costs if the taxpayer qualifies as a "prevailing party." A taxpayer qualifies as a prevailing party if it (1) establishes that the position of the United States was not substantially justified; (2) substantially prevails with respect to the amount in controversy or with respect to the most significant issue or set of issues presented; and (3) meets certain net worth and (if the taxpayer is a business) size requirements.

HOUSE BILL

The House bill provides that, once a taxpayer has substantially prevailed, the taxpayer may file a motion for an order requiring the disclosure (within a specified period) of all information and copies of relevant records in the possession of the IRS with respect to the taxpayer's case and the substantial justification for the position taken by the IRS.

Effective date.—The provision is effective for notices made and proceedings commenced after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the IRS is required to disclose such information "within a reasonable period of time."

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the information disclosure must be made by the IRS "within a reasonable period of time specified by the court." Disclosure under this provision is subject to the confidentiality restrictions of section 6103. The provision does not require the disclosure of privileged or otherwise non-disclosable information.

2. Increased limit on attorney fees

PRESENT LAW

Attorneys' fees recoverable by prevailing parties as litigation or administrative costs are limited to a maximum of $75 per hour.

HOUSE BILL

The House bill raises the statutory rate to $110 per hour, indexed for inflation beginning after 1992.

Effective date.—The provision applies to notices made and proceedings commenced after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Failure to agree to extension not taken into account

PRESENT LAW

To qualify for an award of attorney's fees, the taxpayer must have exhausted the administrative remedies available within the IRS.

HOUSE BILL

The House bill provides that any failure to agree to an extension of the statute of limitations cannot be taken into account for purposes of determining whether a taxpayer has exhausted the administrative remedies for purposes of determining eligibility for an award of attorney's fees.

Effective date.—The provision applies to proceedings commenced after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

4. IRS employees personally liable in certain cases

PRESENT LAW

IRS employees are not personally liable for the payment of any litigation costs under section 7430.

HOUSE BILL

The House bill gives discretion to the court in tax cases to assess all or a portion of any award under section 7430 against an IRS employee, if the court determines that the proceeding resulted from any arbitrary, capricious, or malicious act of the employee.

The House bill also permits the Government to provide legal representation to an IRS employee accused of arbitrary, capricious, or malicious action. If the court ultimately determines that the IRS employee acted arbitrarily, capriciously, or maliciously, and the court assesses all or a portion of an award under section 7430 against the IRS employee, the IRS employee is required to reim-

burse the Government for the costs of the legal representation (in addition to paying the amount assessed by the court).

Effective date.—The provision applies to proceedings commenced after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not adopt the House bill provision.

I. OTHER PROVISIONS

1. Required content of certain notices

PRESENT LAW

The Code requires the IRS to describe the basis for and identify the amounts of tax due, interest, penalties, and any other additional amounts owed in the notice of deficiency sent to taxpayers.

HOUSE BILL

The House bill requires that the IRS set forth the components of and explanation for each specific adjustment that is the basis for the total tax deficiency. An inadequate description does not invalidate the notice.

Effective date.—The provision applies to notices sent after the date six months after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Treatment of substitute returns for purposes of the penalty for failure to pay taxes

PRESENT LAW

Section 6651(a)(2) provides that the IRS may assess a penalty for failure to pay tax from the due date of the return until the tax is paid. If no return is filed by the taxpayer and the IRS files a substitute return under section 6020, the tax on which the penalty is measured is considered a deficiency assessable under section 6212 or 6213, and the failure to pay penalty begins to accumulate ten days after the IRS sends the taxpayer a notice and demand for payment of the tax.

HOUSE BILL

The House bill applies the failure to file penalty to substitute returns in the same manner as the penalty applies to delinquent filers.

Effective date.—The provision applies in the case of any return the due date for which (determined without regard to extensions) is after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Relief from retroactive application of Treasury Department regulations

PRESENT LAW

Treasury may prescribe the extent (if any) to which regulations shall be applied without retroactive effect.

HOUSE BILL

Temporary and proposed regulations are required to have an effective date no earlier than the date of publication in the Federal Register. This provision may be superseded by a legislative grant authorizing the Treasury to prescribe the effective date with respect to a statutory provision. The Treasury may issue retroactive temporary or proposed regulations to prevent abuse of the statute. The Treasury may also issue retroactive temporary, proposed, or final regulations to correct a procedural defect in the issuance of a regulation. The Treasury may provide that taxpayers may elect to apply a temporary or proposed regulation retroactively from the date of publication of the regulation. Final regulations may take effect from the date of publication of the temporary or proposed regulation to which they relate. The House bill does not apply to regulations prescribed under Code section 986(a)(1)(C) or 986(a)(4) (as amended by the House bill).

Effective date.—The provision applies with respect to any temporary or proposed regulation published on or after February 20, 1992, and any temporary or proposed regulation published before February 20, 1992, and published as a final regulation after that date.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that: (1) regulations may take effect from the date any notice which substantially describes the regulation is issued to the public, (2) the date of filing with the Federal Register, rather than the date of publication, is determinative, (3) the provision shall not apply to any regulation issued within twelve months of the enact-

ment date of the relevant statute, (4) the provision shall not apply to regulations relating to internal Treasury Department policies, practices, or procedures, and (5) present law with respect to rulings is unchanged. The provision applies with respect to any temporary or proposed regulation published on or after July 28, 1992 and any temporary or proposed regulation filed with the Federal Register before July 28, 1992, with respect to which a final regulation has not been filed with the Federal Register before that date. The special rule for regulations issued within twelve months shall only apply with respect to statutes enacted on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The conferees recognize that there may be additional instances in which retroactive application of Treasury regulations has created undue hardship. This provision does not preclude the Congress from both examining these cases and providing any appropriate relief in the future.

Congress occasionally makes retroactive changes in the tax law. When this occurs taxpayers affected by this change in law must resubmit their tax return and pay additional tax liability. It is not the intent of Congress for the IRS to impose penalties on taxpayers who must pay additional taxes due to retroactive changes in the tax law. The IRS uses penalties to discourage taxpayers from avoiding their tax liability or paying it late. If taxpayers come into timely compliance with any retroactive change in the tax law, Congress does not intend that the IRS should impose penalties due to the retroactive change in the tax law.

4. Required notice to taxpayers of certain payments

PRESENT LAW

If the IRS receives a payment without sufficient information to properly credit it to a taxpayer's account, the IRS may attempt to contact the taxpayer. If contact cannot be made, the IRS places the payment in an unidentified remittance file.

HOUSE BILL

The House bill requires the IRS to make reasonable efforts to notify, within 60 days, those taxpayers who have made payments which the IRS cannot associate with any outstanding tax liability.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

5. *Unauthorized enticement of information disclosure*

PRESENT LAW

There is no statutory disincentive for enticing a tax professional to disclose information about clients in exchange for forgiving the taxes of the professional.

HOUSE BILL

The House bill provides that, if a Government employee willfully defers or offers to defer (or willfully forgives or offers to forgive) the determination or collection of any tax due from a tax professional in exchange for certain information concerning a taxpayer who is the professional's client, the information so obtained is not admissable in any manner in determining the tax liability of the taxpayer (the "Exclusionary Rule").

Effective date.—The provision applies to actions taken after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill with respect to the Exclusionary Rule, except that (1) the compromise must be intentional, not willful, (2) the information obtained may not be used in any judicial proceeding in which the taxpayer is a party, except to rebut a false representation made at trial by the taxpayer, and (3) the Senate amendment applies only to information conveyed by the taxpayer to the professional for purposes of obtaining advice regarding the taxpayer's tax liability. In addition, the taxpayer to whom such information pertains may bring a civil action for damages against the United States in a district court of the United States without regard to the amount in controversy. The taxpayer must bring such an action within two years after the date the right of action accrues.[2] Upon a finding of liability, damages shall equal the lesser of $500,000 or the sum of (i) actual economic damages sustained by the taxpayer as a proximate result of the information disclosure, and (ii) the costs of the action. The district court must stay any proceedings with respect to such an action pending completion of any ongoing investigation or prosecution of the taxpayer (which the Commissioner has certified is ongoing to the court).

The remedies provided by the Senate amendment shall not apply to information conveyed to an attorney, certified public accountant or enrolled agent for the purpose of perpetrating a fraud or crime.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that it deletes the Exclusionary Rule. This provision is in-

---

[2] The general accrual rule applied under the Federal Tort Claims Act (28 U.S.C. sec. 2401(b)) is to be applied to actions under this provision; *i.e.*, the right of action does not accrue until a claimant has had a reasonable opportunity to discover all of the essential elements of a possible cause of action. See, e.g., *Rosales v. United States*, 824 F.2d 799 (9th Cir. 1987); *Zeidler v. United States*, 601 F.2d (10th Cir. 1979).

tended to apply only where a direct nexus exists between the enticement of the information from the tax professional and the compromise of the professional's tax liability. It is not intended to apply to examination and collection activities of the IRS done in the ordinary course of its determination or collection of tax.

J. Form Modifications; Studies

1. Explanation of certain provisions

Present Law

Section 6159 authorizes the IRS to enter into written installment agreements with any taxpayer. Section 7122 authorizes the IRS to accept offers in compromise from taxpayers in certain situations. Section 6161 authorizes the IRS to extend the time for payment of tax.

House Bill

The House bill requires the IRS to take such actions as may be appropriate (including improved publicity) to ensure that taxpayers are aware of the availability of installment agreements, offers in compromise, and the extension of time to pay tax. The IRS must do so in both the income tax return instructions and collection notices.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Improved procedures for notifying IRS of change of address or name

Present Law

Generally, the IRS posts the new address of a taxpayer only upon the filing of the subsequent tax return which contains a new address or if the taxpayer submits a Form 8822, *Change of Address*, to the IRS.

House Bill

The House bill requires the IRS to provide improved procedures for taxpayers to notify the IRS of changes in names or addresses. In addition, the House bill requires that the IRS institute procedures before 1993 for the timely updating of all IRS records with change of address information provided to the IRS by taxpayers.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that such updating procedures must be implemented by June 30, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Rights and responsibilities of divorced individuals

PRESENT LAW

The IRS provides information on the rights and responsibilities of divorced individuals in Publication 504, *Tax Information for Divorced or Separated Individuals.* This publication is not as widely utilized as Publication 1, *Your Rights As a Taxpayer.*

HOUSE BILL

The House bill requires the IRS to include a section on the rights and responsibilities of divorced individuals in Publication 1, *Your Rights As a Taxpayer.*

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

K. STUDIES

1. Pilot programs for appeal of enforcement actions

PRESENT LAW

A taxpayer who disagrees with an IRS collection action generally can only appeal to successively higher levels of management in the Collection Division. Certain cases involving the 6672 penalty, offers-in-compromise, and employment tax issues may, however, be appealed to the Appeals Division.

HOUSE BILL

The House bill requires the IRS to establish a one-year pilot program to evaluate the merits of allowing an independent appeal, by the taxpayer, to the Appeals Division of enforcement actions (including lien, levy, and seizure actions) where the deficiency was assessed without the actual knowledge of the taxpayer, where the deficiency was assessed without an opportunity for administrative appeal, and in other appropriate circumstances.

Effective date.—The IRS is required to report to the tax-writing committees by December 31, 1992, on the effectiveness of the pilot program.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the report on the effectiveness of the pilot program is due on June 30, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Study on taxpayers with special needs

PRESENT LAW

The IRS is responsible for providing timely and accurate assistance to taxpayers who want to comply with Federal tax laws.

HOUSE BILL

The House bill requires the IRS to conduct a study of ways to assist the elderly, physically impaired, foreign-language speaking, and other taxpayers with special needs to comply with the tax laws.

Effective date.—The report (and any recommendations) must be submitted to the tax-writing committees by December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the report is due on June 30, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Reports on Taxpayer Rights Education Program

PRESENT LAW

The IRS is currently conducting a program to educate revenue officers concerning the rights of taxpayers.

HOUSE BILL

The House bill requires the IRS to report to the tax-writing Committees on its taxpayer rights education program for its officers and employees, including the scope and content of the program, and on the effectiveness of the program.

Effective date.—The report on the scope and content of the taxpayer-rights education program must be submitted to the tax-writing committees by August 1, 1992, and the report on the effectiveness of the program must be submitted by December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the report on the scope and content of the taxpayer-rights education program must be submitted to the tax-writing committees by April 1, 1993, and the report on the effectiveness of the program must be submitted by June 30, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Biennial reports on misconduct by IRS employees

PRESENT LAW

As mandated by the Inspector General Act, every six months the Inspector General of the Department of the Treasury receives information from the IRS for the Secretary of the Treasury's semiannual report to Congress on employee misconduct. The Inspector General Act, in part, requires that these reports include summary information and descriptions of significant investigative activities and a summary of matters referred to prosecuting authorities and the prosecutions and convictions that have resulted.

HOUSE BILL

The House bill requires the IRS to report to the tax-writing committees every two years on all cases involving complaints about IRS employee misconduct and on the disposition of those complaints.

Effective date.—The first report must be submitted during December 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the reports are due in June every two years, with the first report due in June 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

5. Study of notices of deficiency

PRESENT LAW

Under section 6212, the IRS is required to send a notice of tax deficiency to taxpayers by registered or certified mail.

HOUSE BILL

The House bill requires the GAO to study the effectiveness of current IRS efforts to notify taxpayers with regard to tax deficiencies under section 6212, the number of registered or certified letters and other notices returned to the IRS as undeliverable, any follow-up action taken by the IRS to locate the taxpayers, the effect that failures to receive actual notice have on taxpayers, and recom-

mendations on how the IRS can better notify taxpayers of tax deficiencies.

Effective date.—The report and recommendations must be furnished by December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the report and recommendations are due by June 30, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Notice and form accuracy study

PRESENT LAW

The IRS is responsible for providing accurate and instructive notices, forms, and instructions to taxpayers to assist them in complying with Federal tax laws.

HOUSE BILL

The House bill requires the GAO to study annually the accuracy of 25 of the most commonly used IRS forms, notices, and publications. In conducting its review, the GAO is to seek and consider the comments of organizations representing taxpayers, employers, and tax professionals.

Effective date.—The initial report (and any recommendations) must be submitted to the tax-writing committees by December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the initial report and recommendations are due by June 30, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

7. IRS employees' suggestions study

PRESENT LAW

The IRS maintains several programs to encourage and reward employees who make suggestions for improving the administration of the tax system.

HOUSE BILL

The House bill requires the GAO to conduct a review of the IRS employee suggestion programs. The study is to include a review of all suggestions that were accepted and rewarded by the IRS, an analysis as to how many of these suggestions were implemented, and why the remaining suggestions were not implemented.

Effective date.—The report (and any recommendations) must be submitted to the tax-writing committees by December 31, 1992.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the report and recommendations are due by June 30, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

VI. TECHNICAL CORRECTIONS

SUBTITLE A. REVENUE PROVISIONS

I. TECHNICAL CORRECTIONS TO THE REVENUE RECONCILIATION ACT OF 1990

A. INDIVIDUAL INCOME TAX PROVISIONS

1. Minimum tax rate on certain nonresident aliens (sec. 6101(a)(2) of the House bill, sec. 6101(a)(2) of the Senate amendment, sec. 11102 of the 1990 Act, and sec. 897 of the Code)

PRESENT LAW

The Revenue Reconciliation Act of 1990 (the "1990 Act") increased the alternative minimum tax rate on individuals from 21 percent to 24 percent.

HOUSE BILL

The House bill conforms the rate of the minimum tax on the U.S. real property gains of nonresident aliens to the 24 percent minimum tax rate enacted in the 1990 Act.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Tax rate of personal holding companies (sec. 6101(a)(4) of the House bill, sec. 6101(a)(4) of the Senate amendment, sec. 11101 of the 1990 Act, and sec. 541 of the Code)

PRESENT LAW

A corporation that is treated as a personal holding company is subject, in addition to the regular corporate tax, to a 28-percent tax on its undistributed personal holding company income for the taxable year. The present-law rate of 28 percent was set by the Tax

Reform Act of 1986.[1] This rate reflected the maximum rate of tax on individuals in that Act.

The 1990 Act increased the maximum rate of tax on individuals from 28 percent to 31 percent effective for taxable years beginning after December 31, 1990.

HOUSE BILL

The House bill provides that the increase in the individual maximum tax rate to 31 percent also applies to the personal holding company tax rate, effective for taxable years beginning after December 31, 1990.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Definition of AGI for the earned income tax credit and the supplemental earned income tax credit for health insurance premiums (sec. 6101(a)(5) of the House bill, sec. 6101(a)(5) of the Senate amendment, sec. 11111 of the 1990 Act, and sec. 32 of the Code)

PRESENT LAW

Under present law, a supplemental earned income tax credit (EITC) is available to certain taxpayers for qualified health insurance expenses. Qualified health insurance expenses for which the credit is available are amounts paid during the taxable year for health insurance coverage that includes one or more qualifying children. These expenses include only those expenses relating to the cost of coverage (i.e., premium cost) paid with after-tax dollars. The maximum credit is $428 in 1991. The credit is phased out as adjusted gross income (AGI) (or earned income, if greater) exceeds $11,250 in 1991. Earned income amounts taken into account in computing the maximum credit and the beginning point of the phase-out range are indexed for inflation.

The calculation of this supplemental child health insurance credit is generally the same as the calculation of the basic EITC. Thus, the same eligibility criteria and income phase-in and phase-out requirements apply. There is no family size adjustment with respect to the health insurance credit.

Present law provides that the amount of expenses taken into account in determining the deduction for health insurance costs of self-employed individuals (sec. 162(l)) is reduced by the amount (if any) of the supplemental child health insurance credit allowable to the taxpayer (sec. 162(l)(3)(B)). This so-called "double-dip" provision creates a calculation problem because the amount of the EITC, the supplemental young child credit, and the child health insurance

---

[1] See P.L. 99–514, sec. 104 (b)(8).

credit cannot be determined until AGI is determined; however, AGI is determined with reference to the deduction for health insurance costs of self-employed individuals. Thus, the operation of the double-dip provision creates a circularity that increases the complexity of the child health credit.

HOUSE BILL

Under the House bill, for purposes of the EITC, the supplemental young child credit, and the supplemental child health insurance credit, AGI is calculated assuming that the taxpayer is entitled to the full deduction for health insurance costs under section 162(l). Then, after the maximum child health credit is determined, the double-dip rule (sec. 162(l)(3)(B)) operates as it does under present law.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

4. Deletion of deadwood (sec. 6101(a)(7) of the House bill and section 402(e)(1)(B) of the Code)

PRESENT LAW

A separate tax is imposed on lump sum distributions for a qualified pension plan or qualified annuity plan. Prior to the Revenue Reconciliation Act of 1990 (the "1990 Act"), the benefit of 15-percent rate and personal exemption was phased out for certain higher income individuals (prior law sec. 1(g)). The rules providing for the separate tax on lump sum distributions contained a special rule relating to the effect of the phaseout to the tax on lump sum distributions. The phaseout rules were repealed by the Revenue Reconciliation Act of 1990.

HOUSE BILL

The House bill deleted as deadwood the special rule relating to the effect of the phaseout on the tax on lump sum distributions.

SENATE AMENDMENT

The Senate amendment contained no provision since the deadwood provision had been previously deleted by section 521(a) of the Unemployment Compensation Amendments of 1992 (P.L. 102–318).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

5. Correction of head of household rate table for proper indexation (sec. 6101(a)(8) of the House bill and sec. 1(b) of the Code)

PRESENT LAW

A separate rate schedule is provided for individuals that are heads of households. The dollar amounts in the schedule are adjusted for inflation.

HOUSE BILL

The House bill modifies the rate schedule for individuals that are heads of households to correct a transposition error made in the 1990 Act.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

B. EXCISE TAX PROVISIONS

1. Application of the 2.5-cents-per-gallon tax on fuel used in rail transportation to States and local governments (sec. 6101(b)(3) of the House bill, sec. 6101(b)(3) of the Senate amendment, sec. 11211(b)(4) of the 1990 Act, and sec. 4093 of the Code)

PRESENT LAW

The 1990 Act increased the highway and motorboat fuels taxes by 5 cents per gallon, effective on December 1, 1990. The 1990 Act continued the exemption from these taxes for fuels used by States and local governments.

The 1990 Act also imposed a 2.5-cents-per-gallon tax on fuel used in rail transportation, also effective on December 1, 1990. Because of a drafting error in the 1990 Act, the 2.5-cents-per-gallon tax on fuel used in rail transportation incorrectly applies to States and local governments.

HOUSE BILL

The House bill clarifies that the 2.5-cents-per-gallon tax on fuel used in rail transportation does not apply to such uses by States and local governments.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Deposit of certain aviation tax revenues in Airport and Airway Trust Fund (sec. 6101(b)(5) of the House bill, sec. 6101(b)(5) of the Senate amendment, sec. 11213 of the 1990 Act, and sec. 9502(e)(1) of the Code)

PRESENT LAW

The 1990 Act increased the aviation excise tax rates (except for the international air departure tax rate) by 25 percent, and extended those taxes for five years, effective December 1, 1990, through December 31, 1995. From December 1, 1990 through 1992, the statement of managers on the 1990 Act indicated that the revenues attributable to the *increased* portion of the aviation taxes were to be retained in the General Fund; these revenues will be deposited in the Airport and Airway Trust Fund for 1993 through 1995. The statute as enacted in the 1990 Act omitted this agreement with respect to the taxes other than those imposed on aviation fuels (i.e., the revenues attributable to the *increase* in the air passenger ticket tax and the air cargo tax).

HOUSE BILL

The House bill clarifies that revenues from all aviation excise taxes attributable to the *increased* rates imposed by the 1990 Act on taxable events during periods before January 1, 1993, will be retained in the General Fund. The amendment does not affect revenues attributable to the tax rates imposed before enactment of the 1990 Act and extended by that Act. (This provision is also included in H.R. 4691 as passed by the House of Representatives on May 19, 1992.)

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Small winery production credit and bonding requirements (secs. 6101(b) (7), (8), and (9) of the House bill, sec. 11201 of the 1990 Act, and sec. 5041 of the Code)

PRESENT LAW

A 90-cents-per-gallon credit is allowed to wine producers who produce no more than 250,000 gallons of wine in a year. The credit may be claimed against the producers' excise or income taxes.

Wine producers must post a bond in amounts determined by reference to expected excise tax liability as a condition of legally operating.

HOUSE BILL

The House bill clarifies that wine produced by eligible small wineries may be transferred without payment of tax to bonded warehouses that become liable for payment of the wine excise tax

without losing credit eligibility. In such cases, the bonded warehouse will be eligible for the credit to the same extent as the producer otherwise would have been.

The House bill further clarifies that the Treasury Department has broad regulatory authority to prevent the benefit of the credit from accruing (directly or indirectly) to wineries producing in excess of 250,000 gallons in a calendar year.

The House bill also clarifies that the Treasury Department may take the amount of credit expected to be claimed against a producer's wine excise tax liability into account in determining the amount of required bond.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. The conferees specifically understands that the Treasury regulatory authority extends to all circumstances in which wine production is increased with a purpose of securing indirect credit eligibility for wine produced by such large producers.

4. Floor stocks refunds for certain cigarette taxes (sec. 6101(b)(10) of the House bill and sec. 11202 of the 1990 Act)

Present Law

A floor stocks tax, equal to the amount of the rate increase, is imposed when the rates of Federal excise taxes (other than retail taxes) are increased. The cigarette excise tax rates are scheduled to increase on January 1, 1993. Refunds of this tax, as with the underlying excise tax, are permitted in certain cases.

House Bill

The House bill clarifies that the Treasury Department may make refunds of the cigarette floor stocks tax to be imposed on January 1, 1993, to manufacturers rather than to the persons that actually pay the tax, if the manufacturers demonstrate that the benefit of the refund accrues to the person actually paying the tax.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

C. Other Revenue-Increase Provisions of the 1990 Act

1. Deposits of Railroad Retirement Tax Act taxes (sec. 6101(c)(3) of the House bill, sec. 6101(c)(3) of the Senate amendment, sec. 11334 of the 1990 Act, and sec. 6302(g) of the Code)

Present Law

Employers must deposit income taxes withheld from employees' wages and FICA taxes that are equal to or greater than $100,000 by the close of the next banking day. Under the Railroad Retirement Solvency Act of 1983, the deposit rules for withheld income taxes and FICA taxes automatically apply to Railroad Retirement Tax Act taxes (sec. 226 of P.L. 98–76).

House Bill

The House bill conforms the Internal Revenue Code to the Railroad Retirement Solvency Act of 1983 by stating in the Code that these deposit rules for withheld income taxes and FICA taxes apply to Railroad Retirement Tax Act taxes.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Treatment of salvage and subrogation of property and casualty insurance companies (sec. 6101(c)(4) of the House bill, sec. 6101(c)(4) of the Senate amendment, and sec. 11305 of the 1990 Act)

Present Law

For taxable years beginning after December 31, 1989, property and casualty insurance companies are required to reduce the deduction allowed for losses incurred (both paid and unpaid) by estimated recoveries of salvage and subrogation attributable to such losses. In the case of any property and casualty insurance company that took into account estimated salvage and subrogation recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of the estimated salvage and subrogation recoverable as of the close of the last taxable year beginning before January 1, 1990, is allowed as a deduction ratably over the first 4 taxable years beginning after December 31, 1989. This special deduction was enacted in order to provide such property and casualty insurance companies with substantially the same Federal income tax treatment as that provided to those property and casualty insurance companies that prior to the Revenue Reconciliation Act of 1990 did not take into account estimated salvage and subrogation recoverable in determining losses incurred.

HOUSE BILL

The House bill provides that the earnings and profits of any property and casualty insurance company that took into account estimated salvage and subrogation recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, is to be determined without regard to the special deduction that is allowed over the first 4 taxable years beginning after December 31, 1989. The special deduction is to be taken into account, however, in determining earnings and profits for purposes of applying sections 56, 902, 952(c)(1) and 960 of the Internal Revenue Code of 1986. This provision is considered necessary in order to provide those property and casualty insurance companies that took into account estimated salvage and subrogation recoverable in determining losses incurred with substantially the same Federal income tax treatment as that provided to those property and casualty insurance companies that prior to the 1990 Act did not take into account estimated salvage and subrogation recoverable in determining losses incurred.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Information with respect to certain foreign-owned or foreign corporations: Suspension of the statute of limitations during certain judicial proceedings (sec. 6101(c)(5) of the House bill, sec. 6101(c)(5) of the Senate amendment, secs. 11314 and 11315 of the 1990 Act, and secs. 6038A and 6038C of the Code)

PRESENT LAW

Any domestic corporation that is 25-percent owned by one foreign person is subject to certain information reporting and recordkeeping requirements with respect to transactions carried out directly or indirectly with certain foreign persons treated as related to the domestic corporation ("reportable transactions") (sec. 6038A(a)). In addition, the Code provides procedures whereby an IRS examination request or summons with respect to reportable transactions can be served on foreign related persons through the domestic corporation (sec. 6038A(e)). Similar provisions apply to any foreign corporation engaged in a trade or business within the United States, with respect to information, records, examination requests, and summonses pertaining to the computation of its liability for tax in the United States (sec. 6038C). Certain noncompliance rules may be applied by the Internal Revenue Service in the case of the failure by a domestic corporation to comply with a summons pertaining to a reportable transaction (a "6038A summons") (sec. 6038A(e)), or the failure by a foreign corporation engaged in a U.S. trade or business to comply with a summons issued for pur-

poses of determining the foreign corporation's liability for tax in the United States (a "6038C summons") (sec. 6038C(d)).

Any corporation that is subject to the provisions of section 6038A or 6038C has the right to petition a Federal district court to quash a 6038A or 6038C summons, or to review a determination by the IRS that the corporation did not substantially comply in a timely manner with the 6038A or 6038C summons (sec. 6038A(e)(4)(A) and (B); sec. 6038C(d)(4)). During the period that either such judicial proceeding is pending (including appeals), and for up to 90 days thereafter, the statute of limitations is suspended with respect to any transaction (or item, in the case of a foreign corporation) to which the summons relates (secs. 6038A(e)(4)(D), 6038C(d)(4)).

The legislative history of the 1989 Act amendments to section 6038A states that the suspension of the statute of limitations applies to "the taxable year(s) at issue." [2] The legislative history of the 1990 Act, which added section 6038C to the Code, uses the same language.[3]

HOUSE BILL

The House bill modifies the provisions in sections 6038A and 6038C that suspend the statute of limitations to clarify that the suspension applies to any taxable year the determination of the amount of tax imposed for which is affected by the transaction or item to which the summons relates.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. The conferees intend that, under the provision, a transaction or item would affect the determination of the amount of tax imposed for the taxable year directly at issue, as well as for any taxable year indirectly affected through, for example, net operating loss carrybacks or carryforwards. The conferees do not intend that, under the provision, a transaction or item would affect the determination of the amount of tax imposed for any taxable year other than the taxable year directly at issue solely by reason of any similarity of issues involved. Similarly, the conferees do not intend that, under the provision, a transaction or item would affect the determination of the amount of tax imposed on any taxpayer unrelated to the taxpayer to whom the summons is directed.

---

[2] H. Rep. No. 247, 101st Cong., 1st Sess. 1301 (1989); "Explanation of Provisions Approved by the Committee on October 3, 1989," Senate Finance Committee Print, 101st Cong., 1st Sess. 118 (October 12, 1989).

[3] "Legislative History of Ways and Means Democratic Alternative," House Ways and Means Committee Print (WMCP: 101-37), 101st Cong., 2nd Sess. 58 (October 15, 1990); Report language submitted by the Senate Finance Committee to the Senate Budget Committee on S. 3299, 136 *Cong. Rec.* S 15629, S 15700 (1990).

4. Rate of interest for large corporate underpayments (secs. 6101(c) (6) and (7) of the House bill, secs. 6101(c) (6) and (7) of the Senate amendment, sec. 11341 of the 1990 Act, and sec. 6621(c) of the Code)

PRESENT LAW

The rate of interest otherwise applicable to underpayments of tax is increased by two percent in the case of large corporate underpayments (generally defined to exceed $100,000), applicable to periods after the 30th day following the earlier of a notice of proposed deficiency, the furnishing of a statutory notice of deficiency, or an assessment notice issued in connection with a nondeficiency procedure.

HOUSE BILL

The House bill provides that an IRS notice that is later withdrawn because it was issued in error does not trigger the higher rate of interest. The House bill also corrects an incorrect reference to "this subtitle".

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

D. EXPIRING TAX PROVISIONS

1. Exclusion for employer-provided educational assistance (sec. 6101(d)(1) of the House bill, sec. 6101(d)(1) of the Senate amendment, sec. 11403 of the 1990 Act, and secs. 127 and 132 of the Code)

PRESENT LAW

Employer-provided educational assistance is excludable from gross income if the value of the assistance does not exceed $5,250 and certain other requirements are satisfied (sec. 127). Prior to the 1990 Act, the exclusion did not apply to graduate level courses. The 1990 Act eliminated this restriction. The Omnibus Budget Reconciliation Act of 1989 provided that educational assistance that is not excludable under section 127 due to the dollar limitation on the exclusion and the restriction on graduate level courses is excludable from gross income if and only if it qualifies as a working condition fringe benefit (sec. 132(h)).

HOUSE BILL

The House bill amends the fringe benefit rules to reflect the fact that the graduate level course restriction has been repealed.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Research credit provision: Effective date for repeal of special proration rule (sec. 6101(d)(2) of the House bill, sec. 6101(d)(2) of the Senate amendment, and sec. 11402 of the 1990 Act)

PRESENT LAW

The Omnibus Budget Reconciliation Act of 1989 effectively extended the research credit for nine months by prorating certain qualified research expenses incurred before January 1, 1991. The special rule to prorate qualified research expenses applied in the case of any taxable year which began before October 1, 1990, and ended after September 30, 1990. Under this special proration rule, the amount of qualified research expenses incurred by a taxpayer prior to January 1, 1991, was multiplied by the ratio that the number of days in that taxable year before October 1, 1990, bears to the total number of days in such taxable year before January 1, 1991. The amendments made by the 1989 Act to the research credit (including the new method for calculating a taxpayer's base amount) generally were effective for taxable years beginning after December 31, 1989. However, this effective date did not apply to the special proration rule (which applied to any taxable year which began prior to October 1, 1990—including some years which began before December 31, 1989—if such taxable year ended after September 30, 1990).

Section 11402 of the Revenue Reconciliation Act of 1990 (the "1990 Act") extended the research credit through December 31, 1991, and repealed the special proration rule provided for by the 1989 Act. Section 11402 of the 1990 Act was effective for taxable years beginning after December 31, 1989. Thus, in the case of taxable years beginning before December 31, 1989, and ending after September 30, 1990 (e.g., a taxable year of November 1, 1989 through October 31, 1990), the special proration rule provided by the 1989 Act would continue to apply.

HOUSE BILL

The House bill repeals for all taxable years ending after December 31, 1989, the special proration rule provided for by the 1989 Act.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

E. Energy Tax Provision: Alternative Minimum Tax Adjustment Based on Energy Preferences (Secs. 6101(e)(2) and (6) of the House Bill, Secs. 6101(e)(2) and (6) of the Senate Amendment, Sec. 11531(a) of the 1990 Act, and Sec. 56(h) of the Code)

Present Law

In computing alternative minimum taxable income (and the adjusted current earnings (ACE) adjustment of the alternative minimum tax), certain adjustments are made to the taxpayer's regular tax treatment for intangible drilling costs (IDCs) and depletion. A special energy deduction is also allowed. The special energy deduction is initially determined by determining the taxpayer's (1) intangible drilling cost preference and (2) the marginal production depletion preference. The intangible drilling cost preference is the amount by which the taxpayer's alternative minimum taxable income would be reduced if it were computed without regard to the adjustments for IDCs. The marginal production depletion preference is the amount by which the taxpayer's alternative minimum taxable income would be reduced if it were computed without regard to depletion adjustments attributable to marginal production. The intangible drilling cost preference is then apportioned between (1) the portion of the preference related to qualified exploratory costs and (2) the remaining portion of the preference. The portion of the preference related to qualified exploratory costs is multiplied by 75 percent and the remaining portion is multiplied by 15 percent. The marginal production depletion preference is multiplied by 50 percent. The three products described above are added together to arrive at the taxpayer's special energy deduction (subject to certain limitations).

The special energy deduction is not allowed to the extent that it exceeds 40 percent of alternative minimum taxable income determined without regard to either this special energy deduction or the alternative tax net operating loss deduction. Any special energy deduction amount limited by the 40-percent threshold may not be carried to another taxable year. In addition, the combination of the special energy deduction, the alternative minimum tax net operating loss and the alternative minimum tax foreign tax credit cannot generally offset, in the aggregate, more than 90 percent of a taxpayer's alternative minimum tax determined without such attributes.

House Bill

Interaction of special energy deduction with net operating loss and investment tax credit

The House bill clarifies that the amount of alternative tax net operating loss that is utilized in any taxable year is to be appropriately adjusted to take into account the amount of special energy deduction claimed for that year. This operates to preserve a portion of the alternative tax net operating loss carryover by reducing the amount of net operating loss utilized to the extent of the special energy deduction claimed, which if unused, could not be carried forward.

In addition, the House bill contains a similar provision which clarifies that the limitation on the utilization of the investment tax credit for purposes of the alternative minimum tax is to be determined without regard to the special energy deduction.

Interaction of special energy deduction with adjustment based on adjusted current earnings

The House bill provides that the ACE adjustment is to be computed without regard to the special energy deduction. Thus, the bill specifies that the ACE adjustment is equal to 75 percent of the excess of a corporation's adjusted current earnings over its alternative minimum taxable income computed without regard to either the ACE adjustment, the alternative tax net operating loss deduction, or the special energy deduction.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

F. ESTATE TAX FREEZES (SEC. 6101(f) OF THE HOUSE BILL, SEC. 6101(f) OF THE SENATE AMENDMENT, SEC. 11602 OF THE 1990 ACT, AND SECS. 2701-04 OF THE CODE)

PRESENT LAW

Generally

The value of property transferred by gift or includible in the decedent's gross estate is its fair market value. Fair market value is generally the price at which the property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts (Treas. Reg. sec. 20.2031). Chapter 14 contains rules that supersede the willing buyer, willing seller standard (Code secs. 2701-04).

Preferred interests in corporations and partnerships

Valuation of retained interests

Scope.—Section 2701 provides special rules for valuing certain rights retained in conjunction with the transfer to a family member of an interest in a corporation or partnership. These rules apply to any applicable retained interest held by the transferor or an applicable family member immediately after the transfer of an interest in such entity. An "applicable family member" is, with respect to any transferor, the transferor's spouse, ancestors of the transferor and the spouse, and spouses of such ancestors.

An applicable retained interest is an interest with respect to which there is one of two types of rights ("affected rights"). The first type of affected right is a liquidation, put, call, or conversion right, generally defined as any liquidation, put, call, or conversion right, or similar right, the exercise or nonexercise of which affects

the value of the transferred interest. The second type of affected right is a distribution right[4] in an entity in which the transferor and applicable family members hold control immediately before the transfer. In determining control, an individual is treated as holding any interest held by the individual's brothers, sisters and lineal descendents. A distribution right does not include any right with respect to a junior equity interest.

Valuation.—Section 2701 contains two rules for valuing applicable retained interests. Under the first rule, an affected right other than a right to qualified payments is valued at zero. Under the second rule any retained interest that confers (1) a liquidation, put, call or conversion right and (2) a distribution right that consists of the right to receive a qualified payment is valued on the assumption that each right is exercised in a manner resulting in the lowest value for all such rights (the "lowest value rule"). There is no statutory rule governing the treatment of an applicable retained interest that confers a right to receive a qualified payment, but with respect to which there is no liquidation, put, call or conversion right.

A qualified payment is a dividend payable on a periodic basis and at a fixed rate under cumulative preferred stock (or a comparable payment under a partnership agreement). A transferor or applicable family member may elect not to treat such a dividend (or comparable payment) as a qualified payment. A transferor or applicable family member also may elect to treat any other distribution right as a qualified payment to be paid in the amounts and at the times specified in the election.

Inclusion in transfer tax base.—Failure to make a qualified payment valued under the lowest value rule within four years of its due date generally results in an inclusion in the transfer tax base equal to the difference between the compounded value of the scheduled payments over the compounded value of the payments actually made. The Treasury Department has regulatory authority to make subsequent transfer tax adjustments in the transfer of an applicable retained interest to reflect the increase in a prior taxable gift by reason of section 2701.

Generally, this inclusion occurs if the holder transfers by sale or gift the applicable retained interest during life or at death. In addition, the taxpayer may, by election, treat the payment of the qualified payment as giving rise to an inclusion with respect to prior periods.

The inclusion continues to apply if the applicable retained interest is transferred to an applicable family member. There is no inclusion on a transfer of an applicable retained interest to a spouse for consideration or in a transaction qualifying for the marital deduction but subsequent transfers by the spouse are subject to the inclusion. Other transfers to applicable family members result in an immediate inclusion as well as subjecting the transferee to subsequent inclusions.

---

[4] A distribution right generally is a right to a distribution from a corporation with respect to its stock, or from a partnership with respect to a partner's interest in the partnership.

Minimum value of residual interest

Section 2701 also establishes a minimum value for a junior equity interest in a corporation or partnership. For partnerships, a junior equity interest is an interest under which the rights to income and capital are junior to the rights of all other classes of equity interests.

Trusts and term interests in property

The value of a transfer in trust is the value of the entire property less the value of rights in the property retained by the grantor. Section 2702 provides that in determining the extent to which a transfer of an interest in trust to a member of the transferor's family is a gift, the value of an interest retained by the transferor or an applicable family member is zero unless such interest takes certain prescribed forms.

For a transfer with respect to a specified portion of property, section 2702 applies only to such portion. The section does not apply to the extent that the transfer is incomplete.

Options and buy-sell agreements

A restriction upon the sale or transfer of property may reduce its fair market value. Treasury regulations provide that a restriction is to be disregarded unless the agreement represents a bona fide business arrangement and not a device to pass the decedent's shares to the natural objects of his bounty for less than full and adequate consideration (Treas. Reg. sec. 20.2031-2(h)).

Section 2703 provides that for transfer tax purposes the value of property is determined without regard to any option, agreement or other right to acquire or use the property at less than fair market value or any restriction on the right to sell or use such property. Certain options are excepted from this rule. To fall within the exception, the option, agreement, right or restriction must (1) be a bona fide business arrangement, (2) not be a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth, and (3) have terms comparable to similar arrangements entered into by persons in an arm's length transaction.

HOUSE BILL

Preferred interests in corporations and partnerships

Valuation

The House bill provides that an applicable retained interest conferring a distribution right to qualified payments with respect to which there is no liquidation, put, call, or conversion right is valued without regard to section 2701. The bill also provides that the retention of such right gives rise to potential inclusion in the transfer tax base. In making these changes, it is understood that Treasury regulations could provide, in appropriate circumstances, that a right to receive amounts on liquidation of the corporation or partnership constitutes a liquidation right within the meaning of section 2701 if the transferor, alone or with others, holds the right to cause liquidation.

The House bill modifies the definition of junior equity interest by granting regulatory authority to treat a partnership interest with rights that are junior with respect to either income or capital as a junior equity interest. The House bill also modifies the definition of distribution right by replacing the junior equity interest exception with an exception for a right under an interest that is junior to the rights of the transferred interest. As a result, section 2701 does not affect the valuation of a transferred interest that is senior to the retained interest, even if the retained interest is not a junior equity interest.

The House bill modifies the rules for electing into or out of qualified payment treatment. A dividend payable on a periodic basis and at a fixed rate under a cumulative preferred stock held by the transferor is treated as a qualified payment unless the transferor elects otherwise. If held by an applicable family member, such stock is not treated as a qualified payment unless the holder so elects.[5] In addition, a transferor or applicable family member holding any other distribution right may treat such right as a qualified payment to be paid in the amounts and at the times specified in the election.

Inclusion in transfer tax base

The House bill grants the Treasury Department regulatory authority to make subsequent transfer tax adjustments to reflect the inclusion of unpaid amounts with respect to a qualified payment. This authority, for example, would permit the Treasury Department to eliminate the double taxation that might occur if, with respect to a transfer, both the inclusion and the value of qualified payment arrearages were included in the transfer tax base. It would also permit elimination of the double taxation that might result from a transfer to a spouse, who, under the statute, is both an applicable family member and a member of the transferor's family.

The House bill treats a transfer to a spouse falling under the annual exclusion the same as a transfer qualifying for the marital deduction. Thus, no inclusion would occur upon the transfer of an applicable retained interest to a spouse, but subsequent transfers by the spouse would be subject to inclusion. The House bill also clarifies that the inclusion continues to apply if an applicable family member transfers a right to qualified payments to the transferor.

The provision clarifies the consequences of electing to treat a distribution as giving rise to an inclusion. Under the House bill, the election gives rise to an inclusion only with respect to the payment for which the election is made. The inclusion with respect to other payments is unaffected.

Trust and term interests in property

The House bill conforms section 2702 to existing regulatory terminology by substituting the term "incomplete gift" for "incomplete transfer." In addition, the House bill limits the exception for

[5] With respect to gifts made in 1990, the House bill provides that this election may be made by the due date (including extensions) of the transferor's 1991 gift tax return.

incomplete gifts to instances in which the entire gift is incomplete. The Treasury Department is granted regulatory authority, however, to create additional exceptions not inconsistent with the purposes of the section. This authority, for example, could be used to except a charitable trust that meets the requirements of section 664 and that does not otherwise create an opportunity for transferring property to a family member free of transfer tax.

Options and buy-sell agreements

The House bill modifies the exception to the rule disregarding an option for transfer tax valuation. The requirement that the option, agreement, right or restriction not be a device to transfer the property to members of the decedent's family is revised to require that the option not be a device to transfer the property to persons who are natural objects of the bounty of the transferor. This revision conforms section 2703 to the Treasury regulations and recognizes that the section applies with respect to all transfer taxes.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Senate amendment does not include the amendment to the rules relating to buy-sell agreements which would provide that the rules would apply to devices to transfer property to persons who are natural object of the bounty of the transferor.

Conference Agreement

The conference agreement follows the Senate amendment.

G. Miscellaneous Provisions

1. Conforming amendments to the repeal of the General Utilities doctrine (secs. 6101(g) (1) and (2) of the House bill, secs. 6101(g) (1) and (2) of the Senate amendment, sec. 11702(e)(2) of the 1990 Act, and secs. 897(f) and 1248 of the Code)

Present Law

As a result of changes made by recent tax legislation, gain is generally recognized on the distribution of appreciated property by a corporation to its shareholders. The Technical Corrections subtitle of the 1990 Act and technical correction provisions in prior acts made various conforming amendments arising out of these changes. For example, the 1990 Act made a conforming change to section 355(c) to state the treatment of distributions in section 355 transactions in the affirmative rather than by reference to the provisions of section 311. In addition, the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act") made a conforming change to section 1248(f) to update the references to the nonrecognition provisions contained in that subsection. One of the changes was to change the reference to "section 311(a)" from "section 311".

House Bill

The House bill makes three conforming changes to the Code.

First, section 897(f), relating to the basis in a United States real property interest distributed to a foreign person, is repealed as deadwood. The basis of the distributed property is its fair market value in accordance with section 301(d).

Second, section 1248(f) is amended to add a reference to section 355(c)(1), which provides generally for the nonrecognition of gain or loss on the distribution of stock or securities in certain subsidiary corporations. This retains the substance of the law as it existed before the conforming change to section 355(c) made by the 1990 Act.

Third, section 1248 is amended to clarify that, notwithstanding the conforming changes made by the 1988 Act, with respect to any transaction in which a U.S. person is treated as realizing gain from the sale or exchange of stock of a controlled foreign corporation, the U.S. person shall be treated as having sold or exchanged the stock for purposes of applying section 1248. Thus, if a U.S. person distributes appreciated stock of a controlled foreign corporation to its shareholders in a transaction in which gain is recognized under section 311(b), section 1248 shall be applied as if the stock had been sold or exchanged at its fair market value. Under section 1248(a), part or all of the gain may be treated as a dividend. Under the House bill, the rule treating the distribution for purposes of section 1248 as a sale or exchange also applies where the U.S. person is deemed to distribute the stock under the provisions of section 1248(i). Under section 1248(i), gain will be recognized only to the extent of the amount treated as a dividend under section 1248.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. The conferees do not intend by these amendments to affect the authority of the Secretary of the Treasury to issue regulations under section 1248(f) providing exceptions to the rule recognizing gain in certain distributions (cf. Notice 87-64, 1987-2 C.B. 375).

2. Prohibited transaction rules (sec. 6101(g)(3) of the House bill, sec. 6101(g)(3) of the Senate amendment, sec. 11701(m) of the 1990 Act, and sec. 4975 of the Code)

Present Law

The Code and title I of the Employee Retirement Income Security Act of 1974 (ERISA) prohibit certain transactions between an employee benefit plan and certain persons related to such plan. An exemption to the prohibited transaction rules of title I of ERISA is provided in the case of sales of employer securities the plan is required to dispose of under the Pension Protection Act of 1987 (ERISA sec. 408(b)(12)). The 1990 Act amended the Code to provide that certain transactions that are exempt from the prohibited transaction rules of ERISA are automatically exempt from the prohibited transaction rules of the Code. The 1990 Act change was in-

tended to be limited to transactions exempt under section 408(b)(12) of ERISA.

HOUSE BILL

The House bill conforms the statutory language to legislative intent by providing that transactions that are exempt from the prohibited transaction rules of ERISA by reason of ERISA section 408(b)(12) are also exempt from the prohibited transaction rules of the Code.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Effective date of LIFO adjustment for purposes of computing adjusted current earnings (sec. 6101(g)(4) of the House bill, sec. 6101(g)(4) of the Senate amendment, sec. 11701 of the 1990 Act, sec. 7611(b) of the 1989 Act, and sec. 56(g) of the Code)

PRESENT LAW

For purposes of computing the adjusted current earnings (ACE) component of the corporate alternative minimum tax, taxpayers are required to make the LIFO inventory adjustments provided in section 312(n)(4) of the Code. Section 312(n)(4) generally is applicable for purposes of computing earnings and profits in taxable years beginning after September 30, 1984. The ACE adjustment generally is applicable to taxable years beginning after December 31, 1989.

HOUSE BILL

The House bill clarifies that the LIFO inventory adjustment required for ACE purposes shall be computed by applying the rules of section 312(n)(4) only with respect to taxable years beginning after December 31, 1989. The effective date applicable to the determination of earnings and profits (September 30, 1984) is inapplicable for purposes of the ACE LIFO inventory adjustment. Thus, the ACE LIFO adjustment shall be computed with reference to increases (and decreases, to the extent provided in regulations) in the ACE LIFO reserve in taxable years beginning after December 31, 1989.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

4. Low-income housing credit (sec. 6101(g)(5) of the House bill, sec. 6101(g)(5) of the Senate amendment, sec. 11701(a)(11) of the 1990 Act, and sec. 42 of the Code)

PRESENT LAW

The amendments to the low-income housing tax credit contained in the Omnibus Budget Reconciliation Act of 1989 generally were effective for a building placed in service after December 31, 1989, to the extent the building was financed by tax-exempt bonds ("a bond-financed building"). This rule applied regardless of when the bonds were issued.

A technical correction enacted in the Revenue Reconciliation Act of 1990 (the "1990 Act") limited this effective date to buildings financed with bonds issued after December 31, 1989. Thus, the technical correction applied pre-1989 Act law to a bond-financed building placed in service after December 31, 1989, if the bonds were issued before January 1, 1990.

HOUSE BILL

The House bill repeals the 1990 technical correction. The House bill provides, however, that pre-1989 Act law will apply to a bond-financed building if the owner of the building establishes to the satisfaction of the Secretary of the Treasury reasonable reliance upon the 1990 technical correction.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. The conferees intend that, in the case of buildings placed in service before the date of the bill's enactment, reasonable reliance may be established by a showing of compliance with the law as in effect for those buildings before enactment of the amendments made by the bill.

H. EXPIRED OR OBSOLETE PROVISIONS ("DEADWOOD PROVISIONS") (SECS. 6101(h)(1)-(19) OF THE HOUSE BILL, SECS. 6101(h(1)-(14) OF THE SENATE AMENDMENT, AND SECS. 11801-11816 OF THE 1990 ACT)

PRESENT LAW

The 1990 Act repealed and amended numerous sections of the Code by deleting obsolete provisions ("deadwood"). These amendments were not intended to make substantive changes to the tax law.

HOUSE BILL

The House bill makes several amendments to restore the substance of prior law which was inadvertently changed by the deadwood provisions of the 1990 Act. These amendments include (1) a

provision restoring the prior-law depreciation treatment of certain energy property (sec. 168(e)(3)(B)(vi)); (2) a provision restoring the prior-law definition of property eligible for expensing (sec. 179(d)); (3) a provision restoring the prior-law rule providing that if any member of an affiliated group of corporations elects the credit under section 901 for foreign taxes paid or accrued, then all members of the group paying or accruing such taxes must elect the credit in order for any dividend paid by a member of the group to qualify for the 100-percent dividends received deduction (sec. 243(b)); and (4) the provisions relating to the collection of State individual income taxes (secs. 6361-6365).

The House bill also makes several nonsubstantive clerical amendments to conform the Code to the amendments made by the deadwood provisions. None of these amendments is intended to change the substance of pre-1990 law.

Senate Amendment

The Senate amendment is the same as the House bill except that the Senate amendment did not adopt the corrections provided in House bill sections 6101(h) (15)-(19).

Conference Agreement

The conference agreement follows the House bill.

II. Other Tax Technical Corrections

A. Hedge Bonds (Sec. 6102(b) of the House Bill, Sec. 6102(b) of the Senate Amendment, Sec. 11701 of the 1990 Act, and Sec. 149(g) of the Code)

Present Law

The 1989 Act provided generally that interest on hedge bonds is not tax-exempt unless prescribed minimum percentages of the proceeds are reasonably expected to be spent at set intervals during the five-year period after issuance of the bonds (sec. 149(g)). A hedge bond is defined generally as a bond (1) at least 85 percent of the proceeds of which are not reasonably expected to be spent within three years following issuance and (2) more than 50 percent of the proceeds of which are invested at substantially guaranteed yields for four years or more.

This restriction does not apply to hedge bonds, however, if at least 95 percent of the proceeds are invested in other tax-exempt bonds (not subject to the alternative minimum tax). The 95-percent investment requirement is not violated if investment earnings exceeding five percent of the proceeds are temporarily invested for up to 30 days *pending reinvestment* in taxable (including alternative minimum taxable) investments.

House Bill

The House bill clarifies that the 30-day exception for temporary investments of investment earnings applies to amounts (i.e., principal and earnings thereon) temporarily invested during the

30-day period immediately preceding redemption of the bonds as well as such periods preceding reinvestment of the proceeds.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

B. WITHHOLDING ON DISTRIBUTIONS FROM U.S. REAL PROPERTY HOLDING COMPANIES (SEC. 6102(c) OF THE HOUSE BILL, SEC. 6102(c) OF THE SENATE AMENDMENT, SEC. 129 OF THE DEFICIT REDUCTION ACT OF 1984, AND SEC. 1445 OF THE CODE)

PRESENT LAW

Under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), a foreign investor that disposes of a U.S. real property interest generally is required to pay tax on any gain on the disposition. For this purpose a U.S. real property interest generally includes stock in a domestic corporation that is a U.S. real property holding corporation ("USRPHC"), or was a USRPHC at any time during the previous five years.

A sale or exchange of stock in a USRPHC is an example of a disposition of a U.S. real property interest. In addition, provisions of subchapter C of the Code treat amounts received in certain corporate distributions as amounts received in sales or exchanges, giving rise to tax liability under the FIRPTA rules when a foreign person receives such a distribution from a present or former USRPHC. Thus, amounts received by a foreign shareholder in a USRPHC in a distribution in complete liquidation of the USRPHC are treated as in full payment in exchange for the USRPHC stock, and are therefore subject to tax under FIRPTA (sec. 331; Treas. Reg. sec. 1.897-5T(a)(2)(iii)). Similarly, amounts received by a foreign shareholder in a USRPHC upon redemption of the USRPHC stock are treated as a distribution in part or full payment in exchange for the stock, and are therefore subject to tax under FIRPTA (sec. 302(a); Treas. Reg. sec. 1.897-5T(a)(2)(ii)). Third, amounts received by a foreign shareholder in a USRPHC, in a section 301 distribution from the USRPHC that exceeds the available earnings and profits of the USRPHC, are treated as gain from the sale or exchange of the shareholder's USRPHC stock to the extent that they exceed the shareholder's adjusted basis in the stock; such amounts are therefore also subject to tax under FIRPTA (sec. 301(c)(3); Treas. Reg. sec. 1.897-5T(a)(2)(i)).

FIRPTA withholding

The Tax Reform Act of 1984 established a withholding system to enforce the FIRPTA tax. Unless an exception applies, a transferee of a U.S. real property interest from a foreign person generally is required to withhold the lesser of ten percent of the amount realized (purchase price), or the maximum tax liability on disposition (as determined by the IRS) (sec. 1445).

Although the FIRPTA withholding requirement by its terms generally applies to all dispositions of U.S. real property interests, and subchapter C treats amounts received in certain distributions as amounts received in sales or exchanges, the FIRPTA withholding provisions also provide express rules for withholding on certain distributions treated as sales or exchanges. Generally, distributions in a transaction to which section 302 (redemptions) or part II of subchapter C (liquidations) applies are subject to 10 percent withholding.[6] Although a section 301 distribution in excess of earnings and profits is also treated as a disposition for purposes of computing the FIRPTA liability of a foreign recipient of the distribution, there is no corresponding withholding provision expressly addressed to the payor of such a distribution.

House Bill

The House bill clarifies that FIRPTA withholding requirements apply to any section 301 distribution to a foreign person by a domestic corporation that is or was a USRPHC, which distribution is not made out of the corporation's earnings and profits and is therefore treated as an amount received in a sale or exchange of a U.S. real property interest. (The House bill does not alter the withholding treatment of section 301 distributions by such a corporation that *are* out of earnings and profits.) Under the House bill, the FIRPTA withholding requirements that apply to a section 301 distribution not out of earnings and profits are similar to the requirements applicable to redemption or liquidation distributions to a foreign person by such a corporation. The provision is effective for distributions made after the date of enactment of the bill.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The Conference agreement follows the House bill and the Senate amendment. The conferees intend that no inference be drawn from the provision as to the FIRPTA withholding requirements applicable to such a distribution under present law.

C. Treatment of Credits Attributable to Working Interests in Oil and Gas Properties (Sec. 6102(d) of the House Bill, Sec. 6102(d) of the Senate Amendment, Sec. 501 of the Tax Reform Act of 1986, and Sec. 469 of the Code)

Present Law

Under present law, a working interest in an oil and gas property which does not limit the liability of the taxpayer is not a "passive activity" for purposes of the passive loss rules (sec. 469). However, if any loss from an activity is treated as not being a passive

[6] Under other rules, dividend distributions (i.e., distributions to which sec. 301(c)(1) applies) to foreign persons by U.S. corporations, including USRPHCs, are subject to 30-percent withholding under the Code. Under treaties, the withholding on a dividend may be reduced to as little as 5 or 15 percent.

loss by reason of being from a working interest, any net income from the activity in subsequent years is not treated as income from a passive activity, notwithstanding that the activity may otherwise have become passive with respect to the taxpayer.

HOUSE BILL

The House bill provides that any credit attributable to a working interest in an oil and gas property, in a taxable year in which the activity is no longer treated as not being a passive activity, will not be treated as attributable to a passive activity to the extent of any tax allocable to the net income from the activity for the taxable year. Any credits from the activity in excess of this amount of tax will continue to be treated as arising from a passive activity and will be treated under the rules generally applicable to the passive activity credit.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

D. CLARIFICATION OF PASSIVE LOSS DISPOSITION RULE (SEC. 6102(e) of the House Bill, SEC. 6102(d) OF THE SENATE AMENDMENT, SEC. 501 OF THE TAX REFORM ACT OF 1986, SEC. 1005(a)(2)(A) OF THE TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988, AND SEC. 469(g)(1)(A) OF THE CODE)

PRESENT LAW

The Tax Reform Act of 1986 provided that if a passive activity is disposed of in a transaction in which all gain or loss is recognized, any overall loss from the activity in the year of disposition is recognized and allowed against income (whether active or passive income).[7] The language of the 1986 Act provided that any loss was allowable, first, against income or gain from the passive activity, second, against income or gain from all passive activities, and finally, against any other income or gain. This rule was rewritten by the technical corrections portion of the Technical and Miscellaneous Revenue Act of 1988. The statutory language (as amended by the 1988 Act) providing for the computation of the overall loss for the taxable year of disposition is not entirely clear where the activity is disposed of at a gain.

HOUSE BILL

The House bill clarifies the rule relating to the computation of the overall loss allowed upon the disposition of a passive activity. The House bill provides that, in a transaction in which all gain or loss is recognized on the disposition of a passive activity, any loss from the activity for the taxable year (taking into account all

[7] See S. Rept. 99-313, p. 725.

income, gain, and loss, including gain or loss recognized on the disposition) in excess of any net income or gain from other passive activities for the taxable year is treated as a loss which is not from a passive activity. The provision applies to taxable years beginning after December 31, 1986.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

E. TAXATION OF EXCESS INCLUSIONS OF A RESIDUAL INTEREST IN A REMIC FOR TAXPAYERS SUBJECT TO ALTERNATIVE MINIMUM TAX WITH NET OPERATING LOSSES (SEC. 6102(i) OF THE HOUSE BILL, SEC. 6102(e) OF THE SENATE AMENDMENT, AND SEC. 860E(a)(6) OF THE CODE)

PRESENT LAW

Residual interests in a REMIC

A real estate mortgage investment conduit ("REMIC") is an entity that holds real estate mortgages. All interests in a REMIC must be "regular interests" or "residual interests." A regular interest is an interest the terms of which are fixed on the start-up day, which unconditionally entitles the holder to receive a specified principal amount, and which provides that interest amounts are payable based on a fixed rate (or a variable rate to the extent provided in the Treasury regulations). A residual interest is any interest that is so designated and that is not a regular interest in a REMIC.

Generally, the holder of a residual interest in a REMIC takes into account his daily portion of the taxable income or net loss of such REMIC for each day during which he held such interest. The taxable income of any holder of a residual interest in a REMIC for any taxable year cannot be less than the excess inclusion for the year (sec. 860E). Thus, in general, income from excess inclusions cannot be offset by a net operating loss (or net operating loss carryover) in computing the taxpayer's regular tax.

Alternative minimum tax

Taxpayers are subject to an alternative minimum tax which is payable, in addition to all other tax liabilities, to the extent it exceeds the taxpayer's regular tax. The tax is imposed at a rate of 24 percent (20 percent in the case of a corporation) on alternative minimum taxable income in excess of an exemption amount. Alternative minimum taxable income generally is the taxpayer's taxable income, as increased or decreased by certain adjustments and preferences. Under the alternative tax net operating loss deduction, a taxpayer may deduct ninety percent of its net operating loss carryovers against alternative minimum taxable income.

Because the determination of a taxpayer's alternative minimum taxable income begins with taxable income, a holder of a residual interest in a REMIC may have positive alternative minimum taxable income even where the taxpayer has a net operating loss for the year.

HOUSE BILL

The House bill provides that the present law rule, that the taxable income of a REMIC residual interest shall not be less than its excess inclusions, shall not apply for purposes of the alternative minimum tax. Accordingly, the bill permits a net operating loss (and net operating loss carryovers) to offset income from excess inclusions in computing alternative minimum taxable income. Under the House bill, all taxpayers subject to the alternative minimum tax will pay a tax on excess inclusions at the alternative minimum tax rate, regardless of whether the taxpayer has a net operating loss. The provision is effective for taxable years beginning after December 31, 1986.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that the Senate amendment also provides that the alternative tax net operating loss deduction will be determined by disregarding any excess inclusions for the loss year and for each year to which the loss may be carried. Thus, under the Senate amendment, it is clear that the alternative tax net operating loss deduction cannot offset income from excess inclusions.

The provision of the Senate amendment disregarding the REMIC rule in computing alternative minimum taxable income applies to taxable years beginning after December 31, 1986. The provision of the Senate amendment disregarding excess inclusions in computing the alternative tax net operating loss deduction applies to excess inclusions in taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment with clarifying technical modifications and a change in the effective date. The conference agreement provides three rules for determining the alternative minimum taxable income of a taxpayer that is not a thrift institution that holds residual interests in a REMIC

First, the alternative minimum taxable income of such a taxpayer is computed without regard to the REMIC rule that taxable income cannot be less than the amount of excess inclusions. This provision prevents a taxpayer from having to include in alternative minimum taxable income preference items for which it received no tax benefit.

Second, the alternative minimum taxable income of such a taxpayer for a taxable year cannot be less than the excess inclusions of the residual interests for that year. In effect, this provision prevents nonrefundable credits from reducing the taxpayer's income

tax below an amount equal to what the tentative minimum tax would be if computed only on excess inclusions.

Finally, the amount of any alternative minimum tax net operating loss deduction of such a taxpayer is computed without regard to any excess inclusions. This provision insures that the net operating losses will not reduce any income attributable to any excess inclusions. Thus, all such taxpayers subject to the alternative minimum tax will pay a tax on excess inclusions at the alternative minimum tax rate, regardless of whether the taxpayer has a net operating loss.

The conference agreement is effective for all taxable years beginning after December 31, 1986, unless the taxpayer elects to apply the conference agreement rules only to taxable years beginning after the date of enactment.

F. Conforming Amendments Relating to Pension Reemployment Rights of Members of the Uniformed Services (Sec. 6102(j) of the House Bill, Sec. 6103(b) of the Senate Amendment, and Sec. 414 of the Code)

Legislative Background and Present Law

Veterans' bill

H.R. 1578 ("Uniformed Services Employment and Reemployment Rights Act of 1991") was passed by the House of Representatives on May 14, 1991. The bill was referred to the Senate Committee on Veterans' Affairs on May 16, 1991. On November 7, 1991, S. 1095 ("Uniformed Services Employment and Reemployment Rights Act of 1991") was reported by the Senate Committee on Veterans' Affairs (S. Rept. 102–203), and is pending before the Senate.

H.R. 1578, as passed by the House, and S. 1095, as reported by the Senate Committee on Veterans' Affairs, each amend chapter 43 of title 38, United States Code, to provide for reemployment rights and benefits for individuals who serve in the uniformed services (i.e., the United States Armed Forces or the commissioned corps of the Public Health Service). Each of the bills provides, among other things, that service in the uniformed services is considered service with the employer for retirement plan benefit accrual purposes; the employer that reemploys the individual is liable for funding any resulting obligation; and the reemployed individual is entitled to any accrued benefits derived from employee contributions to the extent that the individual makes payments to the plan with respect to the contributions.

Internal Revenue Code

Under the Internal Revenue Code, overall limits are provided on contributions and benefits under certain retirement plans. Annual additions with respect to each participant under a qualified defined contribution plan generally are limited to the lesser of $30,000 or 25 percent of compensation. Annual deferrals with respect to each participant under an eligible deferred compensation plan (sec. 457) generally are limited to the lesser of $7,500 or 33⅓ of includible compensation. There is no provision under present law that permits contributions or deferrals to exceed these annual

limits in the case of required contributions with respect to a reemployed member of the uniformed services.

Other requirements for which there is no special provision for required contributions with respect to a reemployed member of the uniformed services include the qualified plan nondiscrimination and coverage rules.

HOUSE BILL

The provision amends the Internal Revenue Code to provide special rules in the case of certain required contributions ("make-up contributions") with respect to a reemployed member of the uniformed services. The provision applies only with respect to contributions to a qualified defined contribution plan or eligible deferred compensation plan (sec. 457) that are required under chapter 43 of title 38, United States Code ("title 38") as in effect on December 31, 1992.

Under the provision, if any contribution is made by an employer under a qualified defined contribution plan or eligible deferred compensation plan ("individual account plan") with respect to an individual, and such contribution is required by reason of the individual's rights under title 38, then such contribution is not subject to the generally applicable plan contribution limits in the year in which made.[8] In addition, a plan under which such make-up contribution is made will not be treated as failing to meet any requirement applicable to individual account plans (e.g., nondiscrimination rules) by reason of the making of such contribution, nor will the make-up contribution be taken into account in applying the plan contribution limits to any other contribution made during the year.

A special rule applies in the case of make-up contributions of salary reduction and employer matching amounts. Under the provision, a plan that provides for elective deferrals will be treated as meeting the requirements of title 38 if the employer permits reemployed servicepersons to make additional elective deferrals under the plan during the period which begins on the date of reemployment and has the same length as the period of the individual's absence due to uniformed service. The amount of the additional deferrals may not exceed the amount of deferrals that the individual would have been permitted to make under the plan had the individual continued to be employed by the employer during the period of uniformed service and received compensation at the same rate as received from the employer immediately before such service.

The employer is required to match any additional elective deferrals at the same rate that would have been required had the deferrals actually been made during the period of uniformed service. Additional deferrals and employer matching contributions are treated as required employer contributions for purposes of the rule exempting such contributions from the plan qualification rules described above.

---

[8] However, the amount of any make-up contribution cannot exceed the aggregate amount of employer contributions that would have been permitted under the plan contribution limits had the individual continued to be employed by the employer during the period of uniformed service.

The provision clarifies that nothing in title 38 is to be construed as requiring any earnings to be credited to an employee with respect to any contribution before such contribution is actually made. In addition, nothing in title 38 requires any make-up allocation of any forfeiture, or of any employer contribution which was either (1) voluntary (such as a discretionary profit-sharing contribution) or (2) the total amount of which was determined without reference to the number of, or compensation of, plan participants before being allocated to the accounts of participants. For example, make-up contributions would not be required under a plan that provides for a contribution of a set dollar amount, or set percentage of profits, each year. However, make-up contributions would be required under a plan that provides for contributions based on a percentage of participants' compensation. Any election by an employer to provide credit for such amounts (to the extent permitted under title 38) is subject to applicable nondiscrimination and other plan qualification standards.

The provision also provides that a plan may suspend repayment of a plan loan for the period of uniformed service without adverse consequences to the individual.

Effective date.—The provision is effective only if the amendments to chapter 43, title 38, United States Code, described above (or substantially similar amendments to such chapter) are enacted in the 102nd Congress. In such case, the provision applies in cases in which the employee is reemployed on or after August 1, 1990.

SENATE AMENDMENT

The Senate amendment is generally the same as the House bill.

In addition, the Senate amendment clarifies that a plan under which required make-up contributions are made would not be treated as failing to meet any requirement applicable to individual account plans (e.g., nondiscrimination rules, including the average deferral and contribution percentage tests under secs. 401(k) and (m)) solely by reason of the making of such contribution, nor would the make-up contribution be taken into account in applying the plan contribution limits to any other contribution made during the year. Under the Senate amendment, required contributions are deductible by the employer in the year made, notwithstanding the generally applicable deduction limit on plan contributions (sec. 404(a)), and such contributions would not be taken into account in determining the deductibility of other plan contributions made during the year.

The Senate amendment provides that, under the special rule that applies in the case of make-up contributions of salary reduction and employer matching amounts, the period during which an employer must permit make-up contributions of salary reduction amounts is limited to no more than 5 years.

The Senate amendment clarifies that nothing in title 38 can be construed as requiring any earnings (or make-up earnings) to be credited to an employee with respect to any contribution before such contribution is actually made.

The Senate amendment clarifies that, because make-up contributions would not be made retroactively, but only after a serviceperson's reemployment, amended tax and information returns generally would not be required.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment.

G. Exclusion From Income For Combat Zone Compensation (Sec. 6102(l)(4) of the House Bill, Sec. 6102(f)(4) of the Senate Amendment, and Sec. 112 of the Code)

Present Law

The Code provides that gross income does not include compensation received by a taxpayer for active service in the Armed Forces of the United States for any month during any part of which the taxpayer served in a combat zone (or was hospitalized as a result of such service) (limited to $500 per month for officers). The heading refers to "combat pay," although that term is no longer used to refer to special pay provisions for members of the Armed Forces, nor is the exclusion limited to those special pay provisions (hazardous duty pay (37 U.S.C. sec. 301) and hostile fire or imminent danger pay (37 U.S.C. sec. 310)).

House Bill

The House bill modifies the heading of Code section 112 to refer to "combat zone compensation" instead of "combat pay". The House bill also makes conforming changes to cross-references elsewhere in the Code.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

H. Estate Tax Unified Credit Allowed Nonresident Aliens Under Treaty (Sec. 6102(f)(1) of the House Bill, Sec. 5032(b)(2) of the Technical and Miscellaneous Revenue Act of 1988, and Sec. 2102(c)(3)(A) of the Code)

Present Law

Amount subject to tax

For U.S. citizens and residents, the amount subject to Federal estate and gift tax is determined by reference to all property, wherever situated. For nonresident aliens, the Code provides that the amount subject to Federal estate and gift tax is determined only by reference to property situated in the United States.

The United States has entered into bilateral treaties designed to avoid double transfer taxation. Early treaties typically did this by providing rules for determining situs and requiring that the State of domicile allow a credit for taxes paid to the situs country.[9] In contrast, treaties signed in the 1980s, and the U.S. and OECD model treaties, exempt most property, wherever situated, from taxation outside the State of domicile.[10]

Specific exemption and unified credit

Prior to the Tax Reform Act of 1976, the Code allowed a "specific exemption" against the estate tax. The estate of a U.S. citizen or resident was allowed an exemption of $60,000, while the estate of a nonresident alien was allowed a lesser amount. A number of U.S. estate tax treaties ratified in the 1950s allowed a nonresident alien a "specific exemption" equal to the exemption allowed a U.S. citizen or resident multiplied by the percentage of the gross estate subject to U.S. estate tax (the "pro rata exemption").[11]

The Tax Reform Act of 1976 replaced the specific exemption with a unified credit of $47,000 for the estate of a U.S. citizen or resident and $3,600 for the estate of a nonresident alien. After 1976, two courts interpreted the pro rata exemption allowed in the 1950s treaties as applying to the unified credit, i.e., as allowing a unified credit no less than the unified credit allowed a U.S. citizen or resident multiplied by the percentage of the gross estate situated in the United States (and therefore subject to U.S. estate tax under those treaties).[12]

The Technical and Miscellaneous Revenue Act of 1988 ("TAMRA") increased the unified credit allowed an estate of a nonresident alien to $13,000. In so doing, TAMRA provided that, "to the extent required by any treaty," the estate of a nonresident alien is allowed a unified credit equal to the unified credit allowed a U.S. citizen or resident multiplied by the percentage of the gross estate situated in the United States (Code sec. 2102(c)(3)(A)). Thus, TAMRA did not override the "specific exemption" language of the 1950s treaties, as interpreted by the two courts, and could be interpreted as encouraging the negotiation of pro rata unified credits in future treaties.

HOUSE BILL

The House bill clarifies that in determining the pro rata unified credit required by treaty, property exempted by the treaty from U.S. estate tax is not treated as situated in the United States. Under this rule, a treaty granting a pro rata unified credit would allow a nonresident alien the unified credit allowed a U.S. citizen

---

[9] See Staff of the Joint Committee on Taxation, 98th Cong., 2d Sess., *Explanation of Proposed Estate and Gift Tax Treaty Between the United States and Sweden* 8 (1984).

[10] See, e.g., U.S. Treasury Model Estate and Gift Tax Treaty (1980), Article 7, paragraph 1: "Transfers and deemed transfers by an individual domiciled in a Contracting State of property other than property referred to in Article 5 (Real Property) and 6 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services) shall be taxable only in that State."

[11] See Rev. Rul. 81-303, 1981-2 C.B. 255.

[12] See *Mudry v. United States,* 11 Cl. Ct. 207 (1986) (Swiss treaty); *Burghardt v. Commissioner,* 80 T.C. 705 (1983), *aff'd,* 734 F.2d 3 (3d Cir. 1984) (Italian treaty).

or resident multiplied by the percentage of the gross estate subject to U.S. estate tax, as modified by treaty.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill. The conferees do not intend to affect existing treaties containing pro rata exemptions, because in those treaties taxation follows situs. For future treaties, the conferees intend that any pro rata unified credit negotiated not exceed the proportion of the gross worldwide estate subject to U.S. estate and gift tax, as modified by treaty.

I. LIMITATION ON DEDUCTION FOR CERTAIN INTEREST PAID BY CORPORATION TO RELATED PERSON (SEC. 6102(F)(2) OF THE HOUSE BILL, SEC. 7210(A) OF THE 1989 ACT, AND SEC. 163(J) OF THE CODE)

PRESENT LAW

Subject to certain limitations, a taxpayer may deduct interest paid or accrued on indebtedness within a taxable year (sec. 163(a)). The 1989 Act added a so-called "earnings stripping" limitation on interest deductibility with respect to certain interest paid by corporations to related persons (sec. 163(j)). If the provision applies to a corporation for a taxable year, it disallows deductions for certain amounts of "disqualified interest" paid or accrued by the corporation during that year. If in a taxable year a deduction is disallowed, under the provision, for an amount of interest paid or accrued in that year, the disallowed amount is treated under the earnings stripping provision as disqualified interest paid or accrued in the succeeding taxable year.[13]

In order for the earnings stripping provision to apply to a corporation for a taxable year, two thresholds must be exceeded. To exceed the first threshold, the corporation must have "excess interest expense" as that term is defined in the Code for this purpose. To exceed the second threshold, the corporation must have a ratio of debt to equity as of the close of the taxable year in question (or on any other day prescribed by the Secretary in regulations) that exceeds 1.5 to 1. Excess interest expense is the excess (if any) of the corporation's net interest expense over the sum of 50 percent of the adjusted taxable income of the corporation plus any excess limitation carryforward from a prior year. Excess limitation is the excess (if any) of 50 percent of adjusted taxable income over net interest expense.

HOUSE BILL

The House bill provides that the debt-equity threshold does not apply for purposes of applying the earnings stripping provision to a

[13] Disqualified interest is interest paid by a corporation to related persons that are not subject to U.S. tax on the interest received. (If, in accordance with a U.S. income tax treaty, interest income of a related person is subject to a reduced rate of U.S. tax, a portion of the interest paid to the related person is deemed to be interest on which no tax is imposed.)

carryover of excess interest expense from a prior taxable year. Thus, the House bill clarifies that excess interest carried forward from a year in which the debt-equity ratio threshold is exceeded may be deducted in a subsequent year in which that threshold is not exceeded, but only to the extent that such interest would not otherwise be treated as excess interest expense in the carryforward year.

For example, assume that in year 1 $20 of a corporation's interest expense is nondeductible due to the operation of the earnings stripping provision. The corporation carries forward the $20 of interest deduction that it could not use in year 1. Assume that in year 2 the corporation has a debt-equity ratio of 1 to 1 and $50 of current net and gross interest expense, all of which is disqualified interest, and that it earns $400 of adjusted taxable income. The House bill is intended to clarify that the $20 of interest carried forward from year 1 is deductible in year 2. This is because $70, the sum of the current net interest expense for year 2 ($50) plus the interest expense carried over from year 1 ($20), does not exceed one-half of adjusted taxable income in year 2.

As another example, assume that in year 2 the corporation has a debt-equity ratio of 1 to 1 and $50 of current net and gross interest expense, all of which is disqualified interest, and that it earns $80 of adjusted taxable income. The House bill is intended to clarify that the $20 of interest carried forward from year 1 is not deductible in year 2. This is because the current net interest expense for year 2 ($50) exceeds by $10 one-half of adjusted taxable income in year 2 ($80 divided by 2, or $40). Therefore, treating the year 1 carryover as an interest expense in year 2 causes the corporation to have excess interest expense equal to $30. But for the debt-equity safe harbor, the corporation would have a $30 interest expense disallowance in year 2 if the carried over amount were treated as having been paid in year 2. Under the House bill, no actual year 2 interest can be disallowed. However, under these facts, none of the interest carried over from year 1 can be deducted in year 2. Instead, the interest carried over from year 1 is carried forward for potential deduction (subject to the same rules that applied to the carryforward in year 2) in a year subsequent to year 2.

As a third example, assume that in year 2 the corporation has a debt-equity ratio of 1 to 1 and $50 of current net and gross interest expense, all of which is disqualified interest, and that it earns $110 of adjusted taxable income. The House bill is intended to clarify that $5 of interest carried forward from year 1 is deductible in year 2, and the other $15 of interest carried forward from year 1 is not deductible in year 2. This is because the current net interest expense for year 2 ($50) is $5 less than one-half of adjusted taxable income in year 2 (one-half of $110, or $55). Therefore, even if the debt-equity safe harbor had not been met in year 2, the corporation would have had $5 of excess limitation in year 2 had there been no carryover amount from year 1. On the other hand, treating the year 1 carryover as an interest expense in year 2 causes the corporation to have excess interest expense equal to $15. This $15 may be carried forward to a subsequent year.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

J. BRANCH-LEVEL INTEREST TAX (SEC. 6102(F)(3) OF THE HOUSE BILL, SEC. 1241 OF THE 1986 ACT, AND SEC. 884 OF THE CODE)

PRESENT LAW

Interest paid (or treated as if paid) by a U.S. trade or business (i.e., a U.S. branch) of a foreign corporation is treated as if paid by a U.S. corporation and, hence, is U.S. source and subject to U.S. withholding tax of 30 percent, unless the tax is reduced or eliminated by a specific Code or treaty provision. The Treasury has regulatory authority to limit U.S. sourcing, and hence U.S. withholding, to the amount of interest reasonably expected to be deducted in arriving at the U.S. branch's effectively connected taxable income.

To the extent a U.S. branch of a foreign corporation has allocated to it under Treasury Regulation section 1.882-5 an interest deduction in excess of the interest actually paid by the branch (this generally occurs where the indebtedness of the U.S. branch is disproportionately small compared to the total indebtedness of the foreign corporation), the excess is treated as if it were interest paid on a notional loan to a U.S. subsidiary (the U.S. branch, in actuality) from its foreign corporate parent (the home office). This excess is subject to the 30-percent tax, absent a specific Code exemption or treaty reduction (sec. 884(f)(1)(B)).

These branch-level interest taxes, along with the branch profits tax, were intended to reflect the view that a foreign corporation doing business in the United States generally should be subject to the same substantive tax rules that apply to a foreign corporation operating in the United States through a U.S. subsidiary.[14] Where a U.S. corporation pays interest to its foreign corporate parent, that interest, like the interest deducted by a U.S. branch of a foreign corporation, is also generally subject to a 30-percent U.S. withholding tax unless the tax is reduced by treaty. In the case of a U.S. subsidiary of a foreign parent corporation, the withholding tax applies without regard to whether the interest payment is currently deductible by the U.S. subsidiary. For example, deductions for interest may be delayed or denied under section 163, 263, 263A, 266, 267, or 469, but it is still subject (or not subject) to withholding when paid without regard to the operation of those provisions.

HOUSE BILL

The House bill provides that the branch level interest tax on interest not actually paid by the branch applies to any interest which is allocable to income which is effectively connected with the

[14] Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., *General Explanation of the Tax Reform Act of 1986*, at 1036 (1987).

conduct of a trade or business in the United States. Similarly, in the case of interest paid by the U.S. branch, the House bill provides regulatory authority to limit U.S. sourcing, and hence U.S. withholding, to the amount of interest reasonably expected to be allocable to income which is effectively connected with the conduct of a trade or business in the United States. Thus, where an interest expense of a foreign corporation is allocable to U.S. effectively connected income, but that interest expense would not have been fully deductible for tax purposes under another Code provision had it been paid by a U.S. corporation, the House bill clarifies that such interest is nonetheless treated for branch level interest tax purposes like a payment by a U.S. corporation to a foreign corporate parent. Similarly, with regard to the Treasury's regulatory authority to treat an interest payment by a foreign corporation's U.S. branch as though not paid by a U.S. person for source and withholding purposes, the House bill clarifies that the authority extends to interest payments in excess of those reasonably expected to be allocable to U.S. effectively connected income of the foreign corporation.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

K. Determination of Source in Case of Sales of Inventory Property (Sec. 6102(f)(4) of the House Bill, Sec. 211 of the 1986 Act, and Sec. 865(b) of the Code)

Present Law

Prior to the 1986 Act, the source of income derived from the sale of personal property generally was determined by the place of sale (commonly referred to as the "title passage" rule) (see, e.g., Treas. Reg. sec. 1.861-7, T.D. 6258, 1957-2 C.B. 368). While the 1986 Act generally replaced the place-of-sale rule for sales of personal property with a residence-of-the-seller rule (sec. 865(a)), the Act did not change the place-of-sale rule for most sales of inventory property (sec. 865(b)).

Before and after the 1986 Act, statutory rules for sourcing income from inventory sales have included those covering income from (i) purchasing inventory property outside the United States (other than within a U.S. possession) and selling it in the United States (sec. 861(a)(6)); (ii) purchasing inventory property in the United States and selling it outside the United States (sec. 862(a)(6)); (iii) selling outside the United States inventory property which has been produced by the taxpayer in the United States (or selling in the United States inventory property which has been produced by the taxpayer outside the United States) (sec. 863(b)(2)); and (iv) purchasing inventory property in a U.S. possession and selling it in the United States (sec. 863(b)(3)). Prior to the 1986 Act, these provisions were not limited in application to income from

sales of inventory property, but rather covered sales of personal property generally.

In addition to statutory rules for sourcing items of income from transactions involving inventory property specified in the Code, such as those listed above, the Code both before and after the 1986 Act has contained other sourcing rules that do not make specific reference to property sales, and includes general regulatory authority to allocate and apportion between U.S. and foreign sources items of gross income, expenses, losses, and deductions other than those specified in sections 861(a) and 862(a) (sec. 863(a)). In carving income from the sale inventory property out of the general residence-of-the-seller rule of section 865, section 865(b) makes reference to the above statutory rules making specific reference to inventory property, but not to the general grant of regulatory authority in section 863(a).

House Bill

The House bill modifies the general provision relating to the sourcing of income from the sale of personal property (section 865) so that the cross-reference to sourcing rules applicable to inventory property includes a reference to all of section 863, rather than simply to section 863(b). The House bill thus clarifies that, to the extent that the Secretary of the Treasury had general regulatory authority to provide rules for the sourcing of income from the sales of personal property prior to the 1986 Act, the Secretary of the Treasury retains that authority under present law with respect to inventory property.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. The conference agreement bill is not intended to increase the Treasury Secretary's regulatory authority under section 863(a) beyond the authority that he had under the law in effect prior to the enactment of the 1986 Act. The conferees do not intend that any inference be drawn from this provision either as to the correctness of, or as to the post-1986 Act implications of, any judicial decision interpreting the scope of that pre-1986 Act authority.

L. Repeal of Obsolete Provisions (Sec. 6102(f)(5) of the House Bill, Sec. 10202 of the 1987 Act, and Secs. 6038(a)(1)(F) and 6038A(b)(4) of the Code)

Present Law

A U.S. person who controls a foreign corporation must report certain information related to that foreign corporation as may be required by the Treasury Secretary (Code sec. 6038). Information reporting is also required with respect to certain foreign-owned domestic corporations (Code sec. 6038A). Included under each of these information reporting provisions is a requirement to report such

information as the Treasury Secretary may require for purposes of carrying out the provisions of section 453C. Section 453C, relating to certain indebtedness treated as payment on installment obligations (the so-called "proportional disallowance rule"), was repealed in the Revenue Act of 1987.

House Bill

The House bill repeals as obsolete the information reporting requirements of sections 6038 and 6038A relating to section 453C.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

M. Clarification of Certain Stadium Bond Transition Rule in Tax Reform Act of 1986 (Sec. 6102(g) of the House Bill and Sec. 1317(3)(A) of the Tax Reform Act of 1986)

Present Law

The Tax Reform Act of 1986 included a transition rule authorizing tax-exempt bonds not exceeding $200 million to be issued by or on behalf of the City of Cleveland, Ohio, to finance a stadium. The bonds were required to be issued before January 1, 1991 (and were so issued). As enacted, the rule required Cleveland to retain a residual interest in the stadium following planned private business use.

House Bill

The House bill permits the residual interest in the stadium currently held by the City to Cleveland to be assigned to Cuyahoga County, Ohio, (the county in which both Cleveland and the stadium are located) because of a change in Ohio state law prior to issuance of the bonds. The House bill does not extend the time for issuing the bonds or otherwise affect the amount of bonds or the location or design of the stadium.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

N. Health Care Continuation Rules (Sec. 6102(h) of the House Bill, Sec. 7862(c)(5) of the 1989 Act, Sec. 4980B(f)(2)(B)(i) of the Code, Sec. 602(2)(A) of ERISA, and Sec. 2202(2)(A) of the Public Health Service Act)

Present Law

The Revenue Reconciliation Act of 1989 (the "1989 Act") amended the health care continuation rules to provide that if a covered employee is entitled to Medicare and within 18 months of such entitlement separates from service or has a reduction in hours, the duration of continuation coverage for the spouse and dependents is 36 months from the date the covered employee became entitled to Medicare. One possible interpretation of the statutory language, however, would permit continuation coverage for up to 54 months. This extension of the coverage period was not intended.

House Bill

The House bill amends the Code (sec. 4980B), title I of the Employee Retirement Income Security Act (sec. 602), and the Public Health Service Act (sec. 2202(2)(A)) to limit the continuation coverage in such cases to no more than 36 months. The provision is effective for plan years beginning after December 31, 1989.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

O. Additional Pension Tax Technical Corrections: Rollover and Withholding on Nonperiodic Pension Distributions

Present Law

Under present law, as amended by the Unemployment Compensation Amendments of 1992 (P.L. 102–318) (the Unemployment Act) for years beginning after December 31, 1992, any part of the taxable portion of a distribution from a qualified pension or annuity plan or a tax-sheltered annuity (other than a minimum required distribution) can be rolled over tax free to an individual retirement arrangement (IRA) or another qualified plan or annuity, unless the distribution is one of a series of substantially equal payments made (1) over the life or life expectancy of the participant (or the joint lives or life expectancies of the participant and his or her beneficiary), or (2) over a specified period of 10 years or more (sec. 402).

A qualified retirement or annuity plan must permit participants (and other distributees) to elect to have any distribution that is eligible for rollover treatment paid directly to an eligible retirement plan specified by the participant (sec. 401(a)(31)). An eligible rollover distribution from a tax-deferred annuity plan can be paid directly to another tax-deferred annuity plan. A distribution paid directly to an IRA is not taken into account for purposes of the

rule limiting rollovers from one IRA to another to no more than one per year (sec. 408(d)(3)(B)) because it is not a rollover from one IRA to another IRA.

The plan administrator must notify participants of the direct rollover option within a reasonable period of time before a distribution is made. It is expected that the plan administrator will identify the portion of each distribution that is an eligible rollover distribution.

Withholding is imposed at a rate of 20 percent on any distribution that is eligible to be rolled over but that is not paid directly to an eligible retirement plan. Withholding is not required on employer securities. If a participant does not elect to have an eligible rollover distribution paid directly to an eligible retirement plan, the participant may roll over the distribution within 60 days as under prior law.

The following examples illustrate present law:

Example 1.—Suppose a participant receives a nonperiodic distribution of $10,000 from a tax-qualified plan. The distribution is an eligible rollover distribution. If the participant elects to have the distribution paid directly to an eligible retirement plan specified by the participant, the distribution will not be includible in income in the year of the distribution.

Example 2.—Same as example 1, except that if the participant does not elect to have the distribution paid directly to an eligible retirement plan, then the participant receives $8,000, and $2,000 is withheld by the plan administrator and deposited with the IRS. Because the distribution is an eligible rollover distribution, the participant may roll the distribution ($10,000) over to an IRA or other eligible retirement plan within 60 days. If the participant does so, the distribution will not be includible in income in the year of the distribution. The $2,000 withheld will offset the participant's Federal tax liability attributable to other income, or be refunded to the participant after he or she has filed an income tax return for the year.

Example 3.—Same as example 2, except that after electing to receive the distribution the participant decides to roll over only $8,000 ($10,000 less the amount withheld). In this case, the participant must include $2,000 in income for the year of the distribution.[15]

House Bill

No provision.

Senate Amendment

The Senate amendment clarifies that an eligible rollover distribution paid directly to an eligible retirement plan pursuant to section 401(a)(31) is considered to be a plan distribution followed by an immediate rollover (a "direct rollover"). Accordingly, because a direct rollover is considered a distribution, any applicable spousal consent rules must be satisfied just as if the distribution were paid

[15] The participant may also have to pay a 10-percent additional early withdrawal tax on the $2,000 if he or she has not yet attained age 59½.

directly to the participant. Alternative forms of distribution available under the transferor plan need not be preserved under the transferee plan.[16] In addition, because the direct rollover also is considered a rollover, the amount paid directly to an eligible retirement plan is not includible in income in the year of the distribution, and special NUA treatment no longer applies with respect to employer securities included in such transfer.

The Senate amendment clarifies that a distribution that is one of a series of periodic payments scheduled to be made over the life or life expectancy of the participant (or the joint lives or life expectancies of the participant and his or her beneficiary), or over a specified period of 10 years or more, is not an eligible rollover distribution, even if the form of the distribution may be modified by the participant. Whether distributions subsequent to any modification in the form of distribution (e.g., acceleration) are eligible rollover distributions is to be determined without regard to any distributions made before such modification.

The Senate amendment provides that a participant (or other distributee) is permitted to elect a direct rollover with respect to any portion of an eligible rollover distribution. Thus, for example, a plan may not provide that a participant can directly roll over only the total amount of the distribution or none of the distribution. Withholding at a rate of 20 percent applies to the portion of the distribution not directly rolled over.

The Senate amendment clarifies that rollovers from a tax-sheltered annuity (sec. 403(b)) can only be made to another tax-sheltered annuity, and that the notice requirement applies to tax-sheltered annuities.

The Senate amendment clarifies that the portion of any eligible rollover distribution that represents unrealized appreciation in employer securities generally is subject to the provision requiring the employer to offer the option of a direct rollover, notwithstanding the special rules pertaining to net unrealized appreciation (NUA) in employer securities. For example, suppose a plan participant receives a distribution of employer securities with a value of $15,000, $5,000 of which represents NUA. The total amount is subject to the direct rollover requirements and must be paid, if the participant elects, directly to an eligible retirement plan.

As under present law with respect to participant rollovers, to the extent that amounts attributable to appreciation in employer securities are paid directly to an eligible retirement plan, special NUA treatment no longer applies with respect to such securities. Furthermore, in the case of a distribution other than a lump-sum distribution, if any portion of a distribution that represents unrealized appreciation in employer securities is paid directly to an eligible retirement plan, special NUA treatment does not apply to the portion of the distribution that is paid to the participant. As under present law, withholding is not required with respect to employer securities distributed to the participant.

The Senate amendment provides that the following plan distributions are not eligible rollover distributions: (1) hardship distribu-

[16] A direct rollover is to be distinguished from a trustee-to-trustee transfer under other provisions of the Code.

tions of amounts attributable to elective deferrals under qualified cash-or-deferred arrangements or tax-sheltered annuity plans; (2) withdrawals of elective deferrals that are qualified first-time home-buyer or educational distributions exempt from the additional tax on early withdrawals; (3) corrective distributions of excess deferrals and contributions under qualified cash-or-deferred arrangements; (4) deemed distributions of loans described in section 72(p)(2) that are in default,[17] and (5) certain dividends paid to a plan with respect to employer securities and distributed in cash to participants or their beneficiaries. In addition, so-called "P.S. 58" costs for group-term life insurance are not eligible rollover distributions. Because such distributions are not eligible rollover distributions, they cannot be rolled over, are not subject to the direct rollover requirement, and are not subject to 20-percent withholding.

The Senate amendment provides that other corrective or deemed distributions similar to those described in the preceding paragraph are not eligible rollover distributions to the extent they are specifically identified by the Secretary in regulations. It is intended that the Secretary interpret this grant of regulatory authority restrictively, consistent with Congress' intent in the Unemployment Act to expand the number of distributions eligible for rollover treatment. The Secretary may find it appropriate in certain cases to exempt distributions from the direct rollover and 20-percent withholding requirements but preserve the ability of participants to roll over the distributions themselves.

The Senate amendment provides a *de minimis* exception to the direct rollover requirement, so that a plan does not have to permit a direct rollover of, or withhold upon at a 20-percent rate, distributions of $500 or less. The Senate amendment also provides that a plan does not have to permit a direct rollover of, or withhold upon at a 20-percent rate, any distribution to an alternate payee pursuant to a qualified domestic relations order (QDRO) within the meaning of section 414(p)(1). As under present law, such distributions can be rolled over by the participant if the distribution otherwise qualifies as an eligible rollover distribution. It is intended that the Secretary will provide appropriate rules to prevent abuse of the *de minimis* exception.

The Senate amendment provides that if the portion of any eligible distribution that is a minimum required distribution (sec. 401(a)(9)) is *de minimis* in relation to the portion of such distribution that is not directly rolled over, withholding at a rate of 20 percent applies to the entire portion of the distribution received by the participant. As under present law, such *de minimis* portion may not, however, be rolled over directly or by the participant to an eligible retirement plan. An amount will be considered *de minimis* in relation to the portion of the distribution paid to the participant if it represents no more than 10 percent of such portion.

The Senate amendment provides that a qualified defined benefit plan is an eligible retirement plan to which direct rollovers may be made, provided the plan permits the acceptance of such rollovers.

---

[17] This exception does not apply to loans that are treated as distributions when made under section 72(p)(1).

The Senate amendment provides that social security supplements described in section 411(a)(9) will be disregarded for purposes of determining whether a distribution is one of a series of substantially equal periodic payments. For example, if a participant is entitled to annuity payments of $500 per month for life, supplemented by monthly payments of $200 per month until he or she attains social security age, each monthly payment of $700 received before the social security age and each monthly payment of $500 received after such age are considered to be one of a series of substantially equal periodic payments for life. As such, none of the distributions are eligible rollover distributions. Other temporary periodic payments (e.g., certain disability benefits) similar in nature to social security supplements will be disregarded to the extent they are specifically identified by the Secretary in regulations. It is intended that the exception for temporary periodic payments be interpreted narrowly, consistent with Congress' intent in the Unemployment Act to expand the number of distributions eligible for rollover treatment.

The Senate amendment clarifies that, in the case of a series of periodic payments, the requirement that a written explanation be provided to recipients of eligible rollover distributions (sec. 402(f)) is deemed satisfied if notice is provided within a reasonable period of time before the first payment of such series subject to the requirements of section 401(a)(31), as amended by the Unemployment Act. Similarly, an election by a distributee to have distributions paid directly to an eligible retirement plan applies to all distributions after the election is made and before the election is revoked.

The Senate amendment provides that plan amendments to comply with the pension provisions under the Unemployment Act generally are not required to be made before the first plan year beginning on or after January 1, 1995, if (1) the plan is operated in accordance with the applicable provisions of the Act, (2) the plan is amended to comply with the required changes no later than the first day of the first plan year beginning after December 31, 1994, and (3) the amendment is retroactive to the effective date of the applicable provisions.

The Senate amendment provides that the withholding, direct rollover, and notice requirements under the Act do not apply to any distribution which is one of a series of substantially equal periodic payments with respect to which the annuity starting date is before January 1, 1993. These requirements also do not apply to (1) any distribution that is made before July 1, 1993, on account of the death, disability, or separation from service of a participant before January 1, 1993, or (2) any distribution made on or after July 1, 1993, which is one of a series of substantially equal periodic payments with respect to which the annuity starting date is before July 1, 1993, and which is paid on account of the death, disability, or separation from service of a participant before January 1, 1993.

Finally, the Senate amendment provides that the delayed effective date for the direct rollover and withholding provisions applicable to certain tax-sheltered annuity plans of State or local governments is extended to apply to qualified retirement plans and tax-sheltered annuities of State and local governments. The amend-

ment also clarifies that the delayed effective date also applies for purposes of the new notice requirements (sec. 402(f)).

Effective date.—The provisions are effective as if included in the Unemployment Compensation Amendments of 1992 (P.L. 102-318).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the following additional modifications and clarifications.

The conference agreement provides that the withholding, direct rollover, and notice requirements under the Unemployment Act do not apply to (1) any distribution that is made before July 1, 1993, on account of the termination of the distributing plan before January 1, 1993, or (2) any distribution made on or after July 1, 1993, which is one of a series of substantially equal periodic payments with respect to which the annuity starting date is before July 1, 1993, and which is paid on account of the termination of the distributing plan before January 1, 1993.

The conference agreement clarifies that because a direct rollover is a distribution, characteristics associated with the assets under the distributing plan (e.g., alternative forms of distribution) need not be preserved under the plan accepting the direct rollover. In this way, a direct rollover is to be distinguished from a trustee-to-trustee transfer, which generally is not considered a distribution (except to the extent provided under regulations). Such transfers, including transfers described in Rev. Rul. 67-213, elective transfers described in Treasury regulation section 1.411(d)-4, Q&A-3(b), and transfers from one tax-sheltered annuity to another described in Rev. Rul. 90-24, are still permitted to the extent they comply with applicable rules. Thus, for example, after-tax contributions may be transferred to another qualified plan in a trustee-to-trustee transfer to the extent permitted under applicable rules. However, the availability of a trustee-to-trustee transfer option does not satisfy the requirement that participants be permitted to roll over any portion of any eligible rollover distribution directly to an eligible retirement plan.

The conference agreement clarifies that a direct rollover is deemed to satisfy the requirement that a rollover be completed within 60 days of distribution, whether or not distributed assets are actually deposited in an eligible retirement plan within such period. Also, because a direct rollover is considered a rollover to which section 402(c) (or section 403(a)(4) or 403(b)(8)) applies, special averaging treatment is not available for subsequent distributions (whether or not on account of the same trigger event) from the same plan, or from a plan that would be aggregated with such plan for purposes of determining whether averaging is available (sec. 402(c)(10)).

The conference agreement clarifies that the plan administrator's obligation to identify the portion of each distribution that is an eligible rollover distribution applies at the time of the distribution rather than at the time of the direct rollover election. However, it is expected that the plan administrator will provide recipients with timely information about their accrued benefits under the

plan sufficient to permit them to make an informed decision with regard to the direct rollover and other distribution options. Such information might include, for example, information regarding the recipient's account balance or accrued benefit as of the last valuation date.

The conference agreement clarifies that a deemed distribution of the cost (including P.S. 58 cost) of life insurance protection provided under a qualified plan or annuity is not an eligible rollover distribution.

The conference agreement clarifies that a distributing plan and its administrator will not be subject to penalties or liability because of reasonable reliance on information provided by a benefit recipient regarding the eligible retirement plan to which a direct rollover is to be made. Reliance on such information generally will be presumed to be reasonable to the extent the information is certified (in writing or in such other form as the Secretary shall provide) to be accurate by the recipient plan. Such certification is not required under the provision, but is intended solely as a safe harbor.

The conference agreement also clarifies that an eligible retirement plan accepting a direct rollover will not be disqualified, and the plan and its administrator will not be subject to penalties or liability, because of reasonable reliance on information provided by an individual, or by the administrator of a distributing plan, regarding the characterization of an amount as an eligible rollover distribution from a qualified plan or annuity. Reliance on such information generally will be presumed to be reasonable if the contribution is received directly from a plan that certifies (in writing or in such other form as the Secretary shall provide) that it is intended to be, and is administered as if it were, a qualified plan or annuity. Such certification is not required, but is intended solely as a safe harbor.

The conference agreement clarifies that, in the absence of Treasury regulations, taxpayers can rely on a reasonable, good faith interpretation of the statutory provisions of the Unemployment Act, as amended.

P. Application of Harbor Maintenance Tax to Alaska and Hawaii Ship Passengers

Present Law

A harbor maintenance excise tax ("harbor tax") of 0.125 percent of value applies generally to commercial cargo (including passenger fares) loaded or unloaded at U.S. ports (sec. 4461). The harbor tax does not apply to commercial cargo (other than crude oil with respect to Alaska) loaded or unloaded in Alaska, Hawaii, and U.S. possessions where such cargo is transported to or from the U.S. mainland (for domestic use) or where such cargo is loaded and unloaded in the same State (Alaska or Hawaii) or possession (sec. 4462(b)). Questions have arisen as to whether ship passenger fares in intra-Alaska, Hawaii or possession transportation is to be accorded the same exemption as for "cargo."

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment specifically exempts from the harbor tax passenger fares where transported on U.S. flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters (i.e., leaving and returning to a port in the same State without stopping elsewhere).

Effective date.—Applies as if included in the Harbor Maintenance Revenue Act of 1986 (April 1, 1987).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

B. TARIFFS AND CUSTOMS

1. Technical amendments to the Harmonized Tariff Schedule of the United States (HTSUS)

PRESENT LAW

The Customs and Trade Act of 1990 (hereinafter referred to as the "Trade Act of 1990") included numerous tariff and customs measures affecting the HTSUS.

HOUSE BILL

The House bill makes a number of technical corrections to the HTSUS, primarily arising out of the Trade Act of 1990.

SENATE AMENDMENT

The Senate amendment is identical to the House bill.

CONFERENCE AGREEMENT

The conference agreement retains the provisions in the House bill and Senate amendment.

2. Clarification regarding the application of customs user fees

PRESENT LAW

Section 111(b) of the Trade Act of 1990 provides that, in the case of agricultural products of the United States processed and packed in foreign trade zones, the *ad valorem* merchandise processing fee (MPF) shall be applied solely to the value of the foreign material used to make the container; it exempts the value of the domestic agricultural products from the MPF. The U.S. Customs Service has ruled that, for all products not covered by this provision and in the absence of an express provision to the contrary, the MPF would be assessed on both the domestic and foreign value of the merchandise entering from foreign trade zones.

HOUSE BILL

The House bill clarifies that the MPF is to be applied only to the foreign value of the merchandise entered from a foreign trade zone.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, but it also provides that the provision made by section 111(b)(2)(D)(iv) of the Trade Act of 1990 regarding the application of the MPF to processed agricultural products will also apply to all unliquidated entries from foreign trade zones beginning December 1, 1986.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with a technical modification.

3. Technical amendments to the Omnibus Trade and Competitiveness Act of 1988

PRESENT LAW

Section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 (hereinafter referred to as "the Trade Act of 1988"), provides the President the authority to proclaim certain tariff reductions pursuant to trade agreements with foreign countries. Paragraph (a)(2) provides the President the authority to reduce tariff rates in existence as of August 23, 1988, at which time the Tariff Schedules of the United States (TSUS) were in effect. Pursuant to Title I, Subtitle B of the Trade Act of 1988, the TSUS were replaced by the HTSUS effective January 1, 1989. Tariff negotiations in the Uruguay Round of Multilateral Trade Negotiations have been conducted on the basis of tariff rates under the HTSUS rather than the TSUS.

HOUSE BILL

The House bill amends the Trade Act of 1988 to reflect the fact that any tariff reductions that might be proclaimed by the President pursuant to section 1102(a) of the Trade Act of 1988 will be based upon the tariff rates under the HTSUS as of January 1, 1989.

SENATE AMENDMENT

The Senate amendment is identical to the House bill.

CONFERENCE AGREEMENT

The conference agreement retains the provisions in the House bill and Senate amendment.

4. Technical amendments to the Trade Act of 1990

PRESENT LAW

The Trade Act of 1990 provides for transportation in bond of Canadian lottery material.

HOUSE BILL

The House bill replaces the phrase "entered or withdrawn from warehouse for consumption" in the "Effective Date" section of the Trade Act of 1990 with "entered for transportation in bond."

SENATE AMENDMENT

The Senate amendment is identical to the House bill.

CONFERENCE AGREEMENT

The conference agreement retains the provisions in the House bill and Senate amendment.

5. Technical amendment regarding certain beneficiary countries

PRESENT LAW

Section 213(h) of the Caribbean Basin Economic Recovery Act provides duty reductions on certain handbags, luggage, flat goods, work gloves, and leather wearing apparel. An identical provision was included in the Andean Trade Preference Act.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment clarifies that such duty reductions do not apply to such articles made of textiles and subject to textile agreements.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Clarification of fees for certain Customs services

19 U.S.C. 58(c) authorizes the Customs Service to provide reimbursable services to air couriers operating in express consignment carrier facilities and in centralized hub facilities. The Customs Service has interpreted the present statute to prevent Customs from providing reimbursable services during daytime hours to centralized hub facilities.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment clarifies that Customs may provide daytime reimbursable services to centralized hub facilities during daytime hours. The provision also clarifies that Customs may be reimbursed for all services related to the determination to release cargo, and not just "inspectional" services. These services are reimbursable regardless of whether they are performed on site or not.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with a technical modification.

VII. MISCELLANEOUS REVENUE PROVISIONS

A. INDIVIDUAL INCOME TAX PROVISIONS

1. Expansion of education savings bond provisions

PRESENT LAW

Code section 135 provides that interest income earned on a qualified U.S. Series EE savings bond issued after December 31, 1989, is excludible from gross income if the proceeds of the bond upon redemption do not exceed qualified higher education expenses paid by the taxpayer during the taxable year.[1] "Qualified higher education expenses" include tuition and required fees for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer at an eligible educational institution.[2] A taxpayer cannot qualify for the interest exclusion by paying for the education expenses of another person (such as a grandchild or other relative) who is not a dependent of the taxpayer.

The exclusion provided by section 135 is phased out for certain higher-income taxpayers. A taxpayer's AGI for the year the bond is redeemed (not the year the bond was issued) determines whether or not the phaseout applies. For taxpayers filing a joint return, the phaseout range is for AGI between $60,000 and $90,000 (adjusted for inflation). For single taxpayers and heads of households, the phaseout range is for AGI between $40,000 and $55,000 (adjusted for inflation).

To prevent taxpayers from effectively avoiding the income phaseout limitation (through the issuance of bonds directly in the child's name), section 135(c)(1)(B) provides that the interest exclusion is available only with respect to U.S. Series EE savings bonds issued to taxpayers who are at least 24 years old.

The interest rate on Series EE savings bonds varies, depending on how long the bonds are held. The interest rate on such bonds held for more than five years is based on the market rate for Treasury outstanding obligations with five years to maturity. Bonds held for less than five years earn interest on a fixed, graduated scale (generally below current rates on comparable Treasury instruments). Interest earned on Series EE bonds is paid when the bonds are redeemed.

---

[1] If the aggregate redemption amount (i.e., principal plus interest) of all Series EE bonds redeemed by a taxpayer during the taxable year exceeds the qualified education expenses incurred, then the excludable portion of interest income is based on the ratio that the education expenses bears to the aggregate redemption amount (sec. 135(b)).

[2] Eligible educational institutions are defined in section 1201(a) and 481(a)(1) (C) and (D) of the Higher Education Act of 1965, as in effect on October 21, 1988, and in the Carl D. Perkins Vocational Education Act (subparagraph (C) or (D) of section 521(3)), as in effect on October 21, 1988. An eligible educational institution does not include proprietary institutions.

"Qualified higher education expenses" do not include expenses with respect to any course or other education involving sports, games, or hobbies other than as part of a degree program (sec. 135(c)(2)(B)).

House Bill

No provision.

Senate Amendment

The Senate amendment expands the definition of "qualified higher education expenses" under section 135 to include tuition and required fees paid by a taxpayer for the enrollment or attendance of *any* individual (not simply dependents) at an eligible educational institution.

The Senate amendment also repeals the present-law AGI phaseout limitation under section 135 (and the related rule requiring that bonds be issued to a person who is at least 24 years old). Thus, interest earned on a Series EE savings bond is not subject to tax regardless of the taxpayer's AGI during the year the bond is redeemed if, during that year, the taxpayer pays for qualified higher education expenses of any individual and such expenses exceed the proceeds (principal plus interest) received upon redemption.[3]

The Senate amendment also clarifies that the section 135 exclusion does not apply unless the taxpayer includes, on the return on which the exclusion is claimed, the name, address, and taxpayer identification number of the person for whom qualified education expenses were paid.

Effective date.—The provision applies to U.S. Series EE savings bonds issued after December 31, 1989, and redeemed after December 31, 1992.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Losses on prior sales of principal residences

Present Law

No gain is recognized on the sale of a principal residence if a new residence at least equal in cost to the sales price of the old residence is purchased and used by the taxpayer as his or her principal residence within a specified period of time (sec. 1034). This replacement period generally begins two years before and ends two years after the date of sale of the old residence. The basis of the replacement residence is reduced by the amount of any gain not recognized on the sale of the old residence by reason of section 1034.

A loss on the sale of a personal residence is not deductible.

[3] Present-law section 135(b) prorates the excludible interest when aggregate proceeds from bonds redeemed by a taxpayer during the taxable year exceed qualified education expenses paid by the taxpayer during that year. Consistent with this rule, it is intended that the Treasury Department will prescribe procedures for allocating the income exclusion provided for by section 135 in cases where, with respect to a particular taxable year, two (or more) taxpayers redeem savings bonds and claim to have paid qualified education expenses for the same student, but the aggregate redemption proceeds received by the taxpayers exceed the student's qualified education expenses.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 5638 as passed by the House provides that gains that would be recognized on the sale or exchange of a principal residence of a taxpayer are reduced (but not below zero) by the aggregate of the losses not previously taken into account that were sustained by the taxpayer on the sale or exchange of prior principal residences.)

Effective date (H.R. 5638).—Same as the Senate amendment.

SENATE AMENDMENT

The Senate amendment provides that if the taxpayer suffers a loss upon the sale of a principal residence and the taxpayer purchases a new principal residence within the replacement period specified in Code sec. 1034, then the basis of the replacement residence is increased by the amount of any loss not recognized on the sale of the old residence.

Effective date.—The provision is effective with respect to losses on sales or exchanges of old residences after the date of enactment, for determining recognized gain on principal residences sold or exchanged after December 31, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the provision in H.R. 5638.

3. Tax exemption of veterans' benefits

PRESENT LAW

Section 134 of the Code (as added by the Tax Reform Act of 1986) provides that qualified military benefits are excludable from gross income. In general, a qualified military benefit is an allowance or in-kind benefit received by a member or former member of the uniformed services of the United States (or their spouses or dependents) and which was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice.

The Treasury Department has recently stated that the following veterans' benefits are excludable from income: income arising from VA home mortgage debt waivers and similar debt waiver programs; disability-related payments, including all cost-of-living adjustments that have been made since 1986; and all in-kind benefits provided by the VA as of September 9, 1986, regardless of any subsequent modifications to those benefits.

HOUSE BILL

No provision.

SENATE AMENDMENT

Veterans' benefits administered by the Secretary of Veterans' Affairs are excludable from gross income.

The provision is effective for years beginning after December 31, 1984.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Treatment of cancellation of certain student loans

PRESENT LAW

In the case of an individual, gross income subject to Federal income tax does not include amounts discharged from the cancellation or discharge of certain student loans, provided that the discharge was pursuant to a provision of the loan under which the indebtedness would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers (sec. 108(f)).

Student loans eligible for the exclusion from gross income under section 108(f) include any loan to an individual to assist the individual in attending an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on, but only if the loan was made by (1) the United States (or an instrumentality or agency thereof), (2) a State (or any political subdivision thereof), (3) an educational organization which originally received the funds from which the loan was made from the United States or a State, or (4) certain tax-exempt public benefit corporations whose employees have been deemed to be public employees under State law (sec. 108(f)(2)).

Section 108(f) does not apply to student loans made by an educational organization from funds that were not originally provided to the organization by the United States or a State government.

HOUSE BILL

No provision. (However, H.R. 2735 contains a provision that is identical to that part of the Senate amendment which expands present-law section 108(f) to cancellation of student loans made by an educational organization from funds not originally provided by the United States or a State government.)

SENATE AMENDMENT

Section 108(f) is expanded so that an individual's gross income does not include discharge-of-indebtedness income from the cancellation of a loan made by an educational organization (which maintains a regular faculty and body of students at the place where educational activities are regularly carried on) to assist the individual in attending the educational organization, provided that the loan was made pursuant to a program of the educational organization designed to encourage its students to serve in occupations or geographic areas with unmet needs, and provided that funds for the discharge are not directly (or indirectly) provided by the student's employer. In addition, an exclusion from gross income is provided for discharges of loans made by any organization exempt from tax under section 501(a) to refinance student loans originally

made by a governmental body or educational organization meeting the requirements of section 108(f).

As under present law, the section 108(f) exclusion applies if the discharge of indebtedness was pursuant to a provision of the loan under which all or part of the loan would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers. However, the Senate amendment also provides that the section 108(f) exclusion applies to discharges of student loans by a State (or from funds provided by a State) which had no accredited professional schools for the study of law or medicine on the date the loan was made, if the individual resided for a certain period of time in the State after completion of the individual's attendance at the educational organization with respect to which the loan was made.

Effective date.—The provision is effective for discharges of indebtedness after the date of enactment, except that the effective date is discharges made on or after January 1, 1987, for cases where the discharge is by a State without certain accredited professional schools, if the individual resided for a certain period of time in the State after completion of the individual's attendance at the educational organization with respect to which the loan was made.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Rollover of military separation pay

Present Law

Under present law, any part of the taxable portion of a distribution from a qualified pension or annuity plan or a tax-sheltered annuity (other than a minimum required distribution) can be rolled over tax free to an individual retirement arrangement (IRA) or another qualified plan or annuity, unless the distribution is one of a series of substantially equal payments made (1) over the life or life expectancy of the participant (or the joint lives or life expectancies of the participant and his or her beneficiary), or (2) over a specified period of 10 years or more.

Distributions from a nonqualified plan, including distributions from a severance arrangement, are not eligible for such tax-free rollover treatment.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, up to $25,000 of military separation pay, as defined in section 1174 of title 10 of the United States Code, may be rolled over tax-free to an IRA.

Effective date.—The provision is generally effective for separation pay received after December 5, 1991.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Change in the treatment of involuntary conversions for principal residences in Presidentially declared disaster areas

PRESENT LAW

Under present law, no gain is recognized by the taxpayer if property is involuntarily converted into property similar or related in service or use. If property is involuntarily converted into money or property not similar or related in service or use to the converted property, then gain generally must be recognized. If, however, during the applicable period the taxpayer replaces the converted property with property similar or related in service or use to the converted property, the taxpayer may elect to recognize gain only to the extent that the amount realized upon such conversion exceeds the cost of the replacement property. The applicable period begins with the date of the disposition of the converted property (or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is earlier) and ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 5640 as passed by the House is identical to the Senate amendment.)

SENATE AMENDMENT

The Senate amendment provides that for taxpayers whose principal residence [1] (or any of its contents) is involuntarily converted as a result of a Presidentially declared disaster (and such principal residence is located in an area subject to a disaster that resulted in a subsequent determination by the President that assistance by the Federal Government was warranted under the Disaster Relief and Emergency Assistance Act), no gain is recognized by reason of the receipt of insurance proceeds for unscheduled personal property that was part of the contents of such residence. Furthermore, in the case of any other insurance proceeds for such residence or its contents, the proceeds may be treated as a common pool of funds. If such pool of funds is used to purchase any property similar or related in service or use to the converted residence (or its contents), the taxpayer may elect to recognize gain only to the extent that the amount of the pool of funds exceeds the cost of the replacement property.

In addition, the Senate amendment extends the ending of the applicable period for the replacement of property involuntarily converted as a result of a Presidentially declared disaster to four years after the close of the first taxable year in which any part of the gain upon conversion is realized.

---

[1] As defined under section 1034, except that no ownership requirement is imposed.

Effective date.—The provisions are effective for property involuntarily converted as a result of disasters for which a Presidential declaration is made on or after September 1, 1991, and to taxable years ending on or after such date.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

7. Modification of the exclusion from income for certain foster care payments

PRESENT LAW

Gross income does not include qualified foster care payments received by a foster care provider. A qualified foster care payment must be: (1) paid by a State or local political subdivision thereof or by a placement agency (which is described in section 501(c)(3) and exempt from tax under section 501(a)), and (2) paid to a foster care provider for care in the provider's home or a difficulty of care payment.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that payments by the Federal Government which are taken into account by the State, local political subdivision or placement agency in determining their payments to the provider for care in the provider's home also are not included in the provider's gross income. No inference is intended that other payments from the Federal Government are or are not included in an individual's gross income.

Effective date.—The provision applies to payments made on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

8. Penalty-free withdrawals from annuities for certain higher education expenses

PRESENT LAW

Under present law, a 10-percent excise tax is imposed on premature distributions from tax-deferred annuity contracts.

HOUSE BILL

No provision. (However, H.R. 5674 as passed by the House contains a provision that is substantially the same as the provision in the conference agreement.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that no penalty is imposed on a distribution from a designated higher education expense annuity to an individual if such distribution is used within 90 days to pay qualified tuition and related expenses required by the enrollment or attendance of the individual, or the individual's spouse, child or grandchild at an eligible educational institution. The amount of such expenses is to be reduced by any amount excluded from gross income under section 135, relating to education bonds, by reason of such expenses.

A designated higher education expense annuity is an annuity that is purchased after December 31, 1992 and that is designated by the purchaser as such an annuity at the time of purchase. The provision does not apply to any annuity acquired in an exchange to which section 1035 applies unless the annuity given up by the taxpayer in the exchange was a designated higher education expense annuity.

Any premium paid for a designated higher education expense annuity is not treated as a transfer of property by gift for Federal gift tax purposes. However, if any premium (or any portion thereof) is not treated as a taxable gift solely by reason of this provision, (1) any disqualified lifetime distribution from the portion of the annuity attributable to such premium will be treated as a transfer by gift by the person who paid the premium, and (2) the gross estate of the person who paid the premium will include the value of the portion of the annuity attributable to such premium. A disqualified lifetime distribution is any distribution that is not a qualified higher education distribution and that is made during the life of the purchaser to or for the benefit of another person.

The portion of the annuity attributable to any premium that is not treated as a taxable gift solely by reason of this provision is the portion of the annuity that bears the same ratio to the total value of the annuity as the amount of the premium that is not treated as a taxable gift under present law (without the gift tax exclusion permitted by this provision) bears to the total premium. For example, if the premium payment was $30,000, and $10,000 of that premium was not a taxable gift because it qualified for the annual gift tax exclusion, $20,000 is not treated as a taxable gift solely by reason of this provision. If the total value of the annuity is $36,000 at the time of an event described in the preceding paragraph, the portion of the annuity that is treated as gift or included in the estate of the purchaser is $24,000 (⅔ of $36,000).

Effective date.—The provision is effective as of January 1, 1993.

9. Exclusion from gross income for amounts paid under a life insurance contract by reason of terminal illness

PRESENT LAW

Under present law, gross income does not include amounts received under a life insurance contract if the amounts are paid by reason of the death of the insured.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the present-law exclusion for life insurance proceeds to amounts paid or advanced to an individual under a life insurance contract if the insured under the contract is terminally ill. The provision also provides an exclusion in the case of amounts received from a qualified accelerated benefits corporation for the sale or assignment of a life insurance contract if the insured under the contract is terminally ill.

An insured is considered terminally ill for this purpose if the insured has been certified by a licensed physician as having an illness or physical condition that can reasonably be expected to result in death in 12 months or less.

The provision also clarifies that, for purposes of the provisions relating to the taxation of life insurance companies, a qualified terminal interest rider is treated as life insurance. A qualified terminal interest rider means any rider or addendum, or other provision of, a life insurance contract that provides for payments to an individual in the event of terminal illness.

The issuance of a qualified terminal illness rider with respect to any life insurance contract is not treated as a modification or material change under the contract for purposes of sections 7702 or 7702A of the Code. No inference is created as to the effect of the issuance of a terminal illness rider under present law for purposes of section 7702 or 7702A.

Under the provision, applicants for, or recipients of, benefits under certain public assistance programs are not required to take into account the right to receive accelerated death benefits in determining eligibility for such benefits.

Effective date.—The provision generally is effective for taxable years beginning after December 31, 1989. The provision treating qualified terminal illness riders as life insurance for insurance company tax purposes and the provision providing that the issuance of such a rider is not a modification or material change in a life insurance contract are effective for taxable years beginning before, on, or after December 31, 1989. The provision relating to the effect of the availability of life insurance benefits in the event of terminal illness on eligibility for public assistance benefits is effective on January 1, 1990.

Conference Agreement

The conference agreement does not contain the provision in the Senate amendment.

10. State taxation of nonresident retirement benefits

Present Law

Currently, a number of States impose income tax on retirement income earned in the State but paid to individuals who are no longer residents of the State. These States impose income tax on

such income because the States provide a deferral of tax on retirement income earned in the State, not an exclusion. This is consistent with the treatment of such income under the Internal Revenue Code.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment prohibits a State from imposing income tax on certain periodic payments made to any individual who is not a resident or domiciliary of the State.

Effective date.—Taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

11. Treatment of unpaid child support

PRESENT LAW

Individual taxpayers generally are allowed a deduction for a debt that becomes worthless, provided that the debt was created or acquired in connection with the taxpayer's trade or business. However, individuals may not claim a bad-debt deduction for a nonbusiness debt that becomes worthless (sec. 166(d)).

A taxpayer generally realizes income by the nongratuitous discharge of an indebtedness owed by the taxpayer (sec. 61(a)(12)).

The Internal Revenue Service (IRS) is required to withhold from a tax refund otherwise due an individual an amount equal to delinquent child support payments if it receives notice from a State child support agency that the individual owes past-due support (1) that has been assigned to the State as a condition of eligibility for Aid to Families with Dependent Children (AFDC), or (2) for certain non-AFDC families with minor children (sec. 6402(c)). Refunds so withheld generally are remitted to the State that has been assigned the right to collect the past-due support under the Social Security Act.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment allows certain taxpayers who are owed past-due child support payments of at least $500 to claim a bad-debt deduction.[1] Under the provision, the past-due payments gener-

[1] Under the Senate amendment, the $500 threshold applies to the total of past-due payments owed with respect to all qualifying children of the taxpayer. If this threshold is exceeded, the total amount, including the first $500 (but not exceeding $5,000 per child) is deductible.

ally must be delinquent for at least one year. The deduction claimed may not exceed $5,000 per child per year, and is not available to a taxpayer whose adjusted gross income (AGI) exceeds $50,000.[2]

The deduction applies with respect to child support payments[3] owed with respect to a qualifying child[4] of the taxpayer, if such payments are required to be paid to the taxpayer under a support instrument that is (1) a decree of divorce or separate maintenance or a written instrument incident to such a decree, (2) a written separation agreement, or (3) a decree of a court or administrative agency requiring a parent to make payments for the support or maintenance of one or more children of such parent. Under the provision, the deduction is allowed only if the taxpayer has not assigned the collection rights to the support payments to a State AFDC agency under section 402(a)(26) of the Social Security Act (42 U.S.C. 602(a)(26)).

The deduction provided for by the Senate amendment is allowed in determining AGI (above-the-line), regardless of whether the taxpayer itemizes deductions or claims the standard deduction. In addition, the provision requires the inclusion of the amount of unpaid child support payments in the gross income of the delinquent parent by reason of discharge of indebtedness.[5]

Under the provision, if the child support is collected after the deduction is taken, the taxpayer claiming such a deduction is required to include the payment in gross income for the taxable year in which the payment is received (and the taxpayer making the subsequent payment is entitled to a deduction for the taxable year in which such payment is made).

The Senate amendment specifically provides that it shall not be construed to affect the right of an individual or State to receive any child support payment, or the obligation of an individual to pay child support.

Effective date.—The provision is effective for taxable years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

---

[2] The $500, $5,000, and $50,000 amounts are adjusted for inflation after 1992.

[3] The term "child support payment" is defined as a payment for support of a qualifying child, if such payment is either (1) any periodic payment of a fixed amount, or (2) any payment of a medical or educational expense, insurance premium, or similar item.

[4] For purposes of the provision, the term "qualifying child" means a child with respect to whom a deduction is allowable to the taxpayer under section 151 for the taxable year (generally applying to any son, stepson, daughter, or stepdaughter of the taxpayer over half of whose support for the year was received from the taxpayer and (1) whose gross income for the year is less than the personal exemption amount, or (2) is younger than 19 years old or is a student younger than 24 years old).

[5] On the taxpayer's return claiming the deduction provided for by the provision, the taxpayer is required to include the taxpayer identification number (TIN) of each child with respect to whom support payments are owed and the delinquent parent (unless the taxpayer certifies that the delinquent parent's TIN is not known). The provision also requires the taxpayer claiming the deduction to notify the delinquent parent of the amount of the deduction claimed and that the delinquent parent is required to include such amount in gross income for the taxable year beginning in the preceding calendar year. The IRS is required to provide this notice if the delinquent parent's address is not known to the taxpayer but is available to the IRS.

12. Expansion of qualified scholarships to cover room, board, and travel

PRESENT LAW

Section 117 provides that gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organizational organization described in section 170(b)(1)(A)(ii). The term "qualified scholarship" means any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses.[1]

For purposes of section 117, the term "qualified tuition and related expenses" means (1) tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii), and (2) fees, books, supplies, and equipment required for courses of instruction at such an educational organization. The term "qualified tuition and related expenses" generally does not cover regular living expenses, such as for meals and lodging.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the definition of "qualified tuition and related expenses" under section 117 to include expenses for room, board, and travel required for attendance at an educational organization described in section 170(b)(1)(A)(ii).

As under present law, the tax-free treatment provided by section 117 does not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving a scholarship or tuition reduction.

Effective date.—Amounts received after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

13. Increase the threshold for withholding on gambling winnings

PRESENT LAW

In general, proceeds from a wagering transaction are subject to withholding at a rate of 20 percent if such proceeds exceed $1,000 and if the amount of such proceeds is at least 300 times as large as the amount wagered. The proceeds from a wagering transaction are determined by subtracting from the amount received the

[1] The section 117 exclusion does not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving a scholarship or tuition reduction (sec. 117(c)).

amount wagered. Any non-monetary proceeds that are received are taken into account at fair market value.

In the case of State-conducted lotteries, proceeds from a wager are subject to withholding at a rate of 20 percent if such proceeds exceed $5,000, regardless of the odds of the wager. This rule applies only if the wager is placed with the State agency conducting the lottery or with its authorized agents or employees.

In the case of sweepstakes, wagering pools, or lotteries other than State-conducted lotteries, proceeds from a wager are subject to withholding at a rate of 20 percent if such proceeds exceed $1,000, regardless of the odds of the wager.

No withholding tax is imposed on winnings from a slot machine, bingo, or keno.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the threshold for withholding on proceeds from a wagering transaction from $1,000 to $5,000. The additional requirement for withholding that the proceeds of the wager be at least 300 times the amount of the wager applies to the same extent as under present law.

Effective date.—The provision is effective for payments made after December 31, 1992.

Conference Agreement

The conference agreement does not include the Senate amendment. (However, the conference agreement on H.R. 776 includes the Senate amendment.)

B. Provisions Relating to Charitable Contributions and Tax-Exempt Organizations

1. AMT relief for gifts of appreciated property

Present Law

Donations of appreciated property

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair-market value of property contributed to a charitable organization.[1] However, in the case of a charitable contribution of inventory or other ordinary-income property, short-term capital gain property, or certain gifts to private foundations, the amount of the deduction is limited to the taxpayer's basis in the property.[2] In the case of a charitable contribution of tangible personal property, a taxpayer's deduction is limited

---

[1] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)).

[2] Section 170(e)(3) provides an augmented deduction for certain corporate contributions of inventory property for the care of the ill, the needy, or infants.

to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair-market value of the property exceeds its adjusted basis (sec. 57(a)(6)). However, in the case of a contribution made in a taxable year beginning in 1991 or made before July 1, 1992, in a taxable year beginning in 1992, this rule does not apply to contributions of tangible personal property.

Valuation procedures

Present law and current IRS practice does not provide for a procedure by which taxpayers may seek determination of the IRS' position with respect to the value of property prior to the taxpayer donating the property to a charitable organization. However, if a taxpayer claims a charitable contribution deduction for a noncash gift in excess of $5,000 per item or group of similar items (other than certain publicly traded securities), the taxpayer must attach to his income tax return a separate form (Form 8283), which provides specific information on the donated property and which is signed by a qualified appraiser.[3]

HOUSE BILL

Extension of AMT relief for donated appreciated property

All charitable contributions of appreciated property (real, personal, and intangible) made during 1992 and 1993 will not be treated as a tax preference item for alternative minimum tax (AMT) purposes.

Thus, during 1992 and 1993, if a taxpayer makes a gift to charity of property (other than inventory or other ordinary income property, short-term capital gain property, or certain gifts to private foundations) that is real property, intangible property, or tangible personal property the use of which is related to the donee's tax-exempt purpose, the taxpayer is allowed to claim a deduction for both regular tax and AMT purposes in the amount of the property's fair-market value (subject to present-law percentage limitations).[4] Any carryover of an excess contribution deduction from a contribution made during the period January 1, 1992, through December 31, 1993, also will not be treated as a tax preference item for AMT purposes in any succeeding taxable year to which the excess may be carried forward in accordance with the rules of section 170.

Effective date.—Contributions made during 1992 and 1993.

---

[3] The Form 8283 must be attached to the income tax return (Form 1040) in all cases where total noncash contributions exceed $500, but the Form 8283 need not be signed by a qualified appraiser unless the $5,000 threshold per item or group of similar items is exceeded. In the case of donated art for which a deduction of $20,000 or more is claimed, a complete copy of the signed appraisal must be attached to the Form 8283.

[4] Contributions of inventory or other ordinary income property, short-term capital gain property, and certain gifts to private foundations continue to be governed by present-law rules.

Treasury report on advance valuation procedure

Not later than one year after the date of enactment of the bill, the Secretary of the Treasury is required to submit a report to the Senate Committee on Finance and the House Committee on Ways and Means, reporting on the development of a procedure under which taxpayers could elect to seek an agreement with the Secretary as to the value of tangible personal property prior to the donation of such property to a qualifying charitable organization (provided that time limits for donation and any other conditions contained in the agreement are satisfied). The report should address the setting of possible threshold amounts for claimed value (and the payment of fees) by a taxpayer in order to seek agreement under the procedure, possible limitations on applying the procedure only to items with significant artistic or cultural value, and recommendations for legislative action needed to implement the procedure.

Effective date.—The Treasury Department must report to Congress not later than one year after enactment on the development of an advance valuation procedure.

SENATE AMENDMENT

Permanent AMT relief for donated appreciated property

The bill permanently repeals section 57(a)(6). Thus, the difference between the fair-market value of donated appreciated property (real, personal, or intangible property) and the adjusted basis of such property is not treated as a tax preference item for alternative minimum tax (AMT) purposes. If a taxpayer makes a gift to charity of property (other than inventory or other ordinary income property, short-term capital gain property, or certain gifts to private foundations) that is real property, intangible property, or tangible personal property the use of which is related to the donee's tax-exempt purpose, the taxpayer is allowed to claim a deduction for both regular tax and AMT purposes in the amount of the property's fair-market value (subject to present-law percentage limitations).[5]

Effective date.—Contributions of tangible personal property made after 1991, and contributions of other property made after 1992.

Treasury report on advance valuation procedure

Same as the House bill.

CONFERENCE AGREEMENT

Permanent AMT relief for donated appreciated property

The conference agreement follows the Senate amendment.

Treasury report on advance valuation procedure

The conference agreement follows the House bill and Senate amendment.

---

[5] Contributions of inventory or other ordinary income property, short-term capital gain property, and certain gifts to private foundations continue to be governed by present-law rules.

2. *Allocation and apportionment of deductions for charitable contributions*

PRESENT LAW

Taxpayers may elect to claim a credit against U.S. tax liability for certain foreign taxes which they incur. The foreign tax credit is limited to the amount of U.S. tax otherwise payable on foreign source taxable income. Thus, the foreign tax credit is not available against U.S. tax on U.S. source taxable income. A shift in the source of net income from foreign to U.S. may increase net U.S. tax for some taxpayers by reducing the foreign tax credit limitation and thus the amount of the foreign tax credit which may be claimed.

For purposes of the foreign tax credit limitation, foreign source taxable income is computed by (1) determining the items of gross income that are from foreign sources, and then (2) subtracting from those items the taxpayer's deductions that are allocated or apportioned to foreign source gross income. A shift in the allocation or apportionment of expenses from U.S. source to foreign source gross income decreases foreign source taxable income, and thus, may increase U.S. tax by reducing the foreign tax credit limitation.

In general, the primary statutory rule for allocating and apportioning deductions between foreign and domestic income is that there shall be deducted from foreign and domestic source gross income, respectively, the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot be definitely allocated to some item or class of gross income (secs. 861(b), 862(b), and 863(b)). In addition, for a taxpayer that is a member of an affiliated group of corporations, expenses that are not directly allocated or apportioned to any specific income producing activity generally must be allocated and apportioned under a so-called "one-taxpayer rule"—that is, as if all of the members of the affiliated group were a single corporation (sec. 864(e)(6)).

Charitable contribution deductions generally are treated as not definitely related to any gross income or income producing activity, and therefore are apportioned ratably and subject to the one-taxpayer rule.[1]

Regulations proposed in March 1991 would alter the general rule requiring ratable apportionment of charitable contributions in cases where the use of the contribution is restricted either to purely domestic or purely foreign uses.[2] Under the proposal, a charitable contribution deduction generally would be allocated solely to U.S. source gross income if the taxpayer both designates the contribution for use solely in the United States and reasonably believes that the contribution would be so used. Conversely, a charitable contribution deduction would be allocated solely to foreign source gross income if the taxpayer knows or has reason to know that the contribution would be used solely outside the United

[1] Treas. Reg. sec. 1.861-8(e)(9)(iv); Notice 89-91, 1989-2 C.B. 408, 409.
[2] Proposed Treas. Reg. sec. 1.861-8(e)(12), INTL-116-90, 1991-14 I.R.B. 35.

States or that the contribution may necessarily be used only outside the United States.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, for purposes of computing the source of taxable income for the foreign tax credit limitation, taxpayers are permitted to allocate 40 percent of their otherwise-allowable charitable contribution deductions to gross income from U.S. sources. The remaining 60 percent of charitable contribution deductions must be apportioned ratably between U.S. source gross income and foreign source gross income. As under present law, all corporations included in an affiliated group are treated as a single corporation for purposes of the ratable apportionment of the residual 60 percent of charitable contribution deductions.

For example, assume that a corporation (which is not a member of an affiliated group of corporations) earns $1,000,000 of gross income from foreign sources and $500,000 of gross income from domestic sources for a taxable year. Further assume that it makes charitable contributions that are deductible during the year in the amount of $100,000. Under the Senate amendment, $40,000 (40 percent of $100,000) of the charitable contributions are allocated to U.S. source gross income. The residual amount of charitable contributions, $60,000, is subject to ratable apportionment on the basis of gross income. Thus, of this residual amount, $40,000 is apportioned to foreign source gross income and $20,000 is apportioned to U.S. source gross income. Of the total amount of charitable contributions, $60,000 is allocated and apportioned to U.S. source gross income and $40,000 is allocated and apportioned to foreign source gross income.

Now assume that the corporation has a wholly owned subsidiary which earns $500,000 of gross income for the taxable year, all from sources outside the United States, and makes no deductible charitable contributions. In this case, the parent corporation's charitable contributions are allocated and apportioned as follows. As under the previous example, 40 percent are allocated directly to domestic source gross income. The residual amount, however, is allocated under the one-taxpayer rule. Thus, of the residual amount, $45,000 is apportioned to foreign source gross income and $15,000 is apportioned to U.S. source gross income. Of the total amount of charitable contributions, $55,000 is allocated apportioned to U.S. source gross income and $45,000 is allocated and apportioned to foreign source gross income.

Effective date.—Charitable contributions made on or after January 1, 1994.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

3. Substantiation and information disclosure requirements for certain contributions

PRESENT LAW

An individual taxpayer who itemizes deductions must separately state (on Schedule A to the Form 1040) the aggregate amount of charitable contributions made by cash or check and the aggregate amount made by donated property other than cash or check.

A taxpayer is not required to provide specific information on his or her return regarding a claimed charitable contribution made by cash or check; nor in such a case is a donee organization required to file an information return with the IRS, regardless of the amount of cash or check involved. However, taxpayers must provide certain information (on Form 8283) if the amount of the claimed contribution for all noncash contributions exceeds $500.[1]

A payment (regardless of whether it is termed a "contribution") in exchange for which the payor receives an economic benefit is not deductible under section 170, except to the extent that the taxpayer can demonstrate that the payment exceeded the fair-market value of the benefit received from the charity.[2]

The Internal Revenue Code does not require a tax-exempt organization that is eligible to receive tax-deductible contributions to state explicitly, in its solicitations for support from members of the general public, whether an amount paid to it is deductible as a charitable contribution or whether all or part of the payment constitutes consideration for goods or services furnished by the organization to the payor.[3] In contrast, tax-exempt organizations that are *not* eligible to receive tax-deductible contributions are required to state expressly in certain fund-raising solicitations that contributions or gifts to the organization are not deductible as charitable contributions for Federal income tax purposes (sec. 6113).

HOUSE BILL

No provision.

---

[1] If the claimed deduction for a noncash gift exceeds $5,000 per item or group of similar items (other than certain publicly traded securities) a qualified appraiser must sign the Form 8283, and an authorized representative of the donee charity also must sign the Form 8283, acknowledging receipt of the gift and providing certain other information. In certain situations, information reporting by the donee charity is required if it subsequently disposes of donated property (sec. 6050L).

[2] See Rev. Rul. 67-246, 1967-2 C.B. 104.

Under current IRS practice, certain small items and token benefits (e.g., key chains and bumper stickers) that have insubstantial value are disregarded, such that the full amount of the contribution is deductible. Rev. Proc. 90-12, 1990-1 C.B. 471, provides that tokens or benefits given to the donor in connection with a contribution will be considered to have insubstantial value if (1) the payment occurs in the context of a fundraising campaign in which the charity informs patrons how much of their payment is a deductible contribution, *and* (2) *either* (a) the fair-market value of all the benefits received in connection with the payment is not more than two percent of the payment, or $50, *whichever is less, or* (b) the payment made by the patron is $25 or more (adjusted for inflation) and the only benefits received in connection with the payment are token items (e.g., key chains or mugs) which bear the organization's name or logo and which (in the aggregate) are within the limits for "low-cost items" under section 513(h)(2).

[3] However, Schedule A to the Form 1040 (and the accompanying instructions) inform taxpayers that if they made a contribution and received a benefit in return, the value of that benefit must be subtracted in calculating the charitable contribution deduction.

SENATE AMENDMENT

The provision includes two parts:

(1) *Substantiation requirement.*—Section 170 is amended to provide that no deduction is allowed under that section for any contribution of $100 or more [4] unless the taxpayer has written substantiation from the donee organization of the contribution (including a good faith estimate of the value of any good or service that has been provided to the donor in exchange for making the gift to the donee).[5]

This provision does not impose an information reporting requirement upon charities; rather, it places the responsibility upon taxpayers who claim an itemized deduction for a contribution of $100 or more to request (and maintain in their records) substantiation from the charity of their contribution (and any good or service received in exchange).[6] Taxpayers may not simply rely on a cancelled check as substantiation for a donation in excess of $100.

Under the provision, the substantiation must be obtained by the taxpayer prior to filing his or her return for the taxable year in which the contribution was made (or if earlier, the due date, including extensions, for such return).[7] Substantiation is not required if the donee organization files a return with the IRS (in accordance with Treasury regulations) reporting information sufficient to substantiate the amount of the deductible contribution.

(2) *Information disclosure for quid pro quo contributions.*—Charitable organizations that receive *quid pro quo* contributions (meaning a payment made partly as a contribution and partly in consideration for goods or services furnished to the donor) will be required, in connection with the solicitation or receipt of the contribution, to (1) inform the donor that the amount of the contribution that is deductible for Federal income tax purposes is limited to the excess of the amount of any money (and the value of any property other than money) contributed by the donor over the value of the goods or services provided by the organization, and (2) provide the donor with a good faith estimate of the value of goods or services furnished to the donor by the organization.[8]

---

[4] Separate payments shall generally be treated as separate contributions and shall not be aggregated for the purposes of applying the $100 threshold. In cases of contributions paid by withholding from wages, the deductions from each paycheck shall be treated as separate payments.

[5] If the donee organization provided no goods or services to the taxpayer in consideration of the taxpayer's contribution, the written substantiation must include a statement to that effect.

[6] In the case where a taxpayer makes a noncash contribution, the taxpayer is required to obtain from the charity a receipt that describes the donated property (and indicates whether any good or service was given to the taxpayer in exchange), but the provision does not require the charity to value the property it receives from the donor.

[7] The provision requires that the written acknowledgment provide information sufficient to substantiate the amount of the deductible contribution, but the acknowledgment need not take any particular form. Thus, for example, acknowledgments may be made by letter, postcard, or computer-generated forms. Further, a donee organization may prepare separate acknowledgments for each contribution, or may provide donors with periodic (e.g., annual) acknowledgments that set forth the required information for each contribution of $100 or more made by the donor during the period.

It is intended that a charitable organization that knowingly provides a false written substantiation to a donor will be subject to the penalties provided for by section 6701 for aiding and abetting an understatement of tax liability.

[8] It is intended that the disclosure be made in connection with the solicitation or receipt of the contribution, such that the disclosure is reasonably likely to come to the attention of the donor. For example, a disclosure of the required information in small print set forth within a larger document might not meet the requirement.

The disclosure requirement applies to all *quid pro quo* contributions regardless of the dollar amount of the contribution involved (i.e., even in cases with donations less than $100), and the disclosure must be made by the charity in connection with either the solicitation or receipt of the contribution. Thus, for example, if a charity receives a $75 contribution from a donor, in exchange for which the donor receives a dinner valued at $40, then the charity must inform the donor that only $35 is deductible as a charitable contribution. However, the provision will not apply if only *de minimis*, token goods or services are given to a donor (see Rev. Proc. 90-12, discussed above).[9] Also, the provision will not apply to transactions that have no donative element (e.g., sales of goods by a museum gift shop that are not, in part, donations).

The provision also provides that penalties ($10 per contribution, but capped at $5,000 per particular fundraising event or mailing) may be imposed upon charities that fail to make the required disclosure, unless the failure was due to reasonable cause. The penalties will apply if an organization either fails to make any disclosure in connection with a *quid pro quo* contribution or makes a disclosure that is incomplete or inaccurate (e.g., an estimate not determined in good faith of the value of goods or services furnished to the donor).

The Treasury Department is directed to prescribe regulations not later than July 1, 1993, to implement the substantiation and information disclosure provisions.

Effective date.—The substantiation and information disclosure provisions are effective for contributions made on or after January 1, 1994. Treasury Department regulations to implement the provisions must be prescribed not later than July 1, 1993.

CONFERENCE AGREEMENT

Substantiation requirement

The conference agreement follows the Senate amendment, except that the $100 threshold for the substantiation requirement is increased to $750.

Information disclosure with quid pro quo contributions

The conference agreement follows the Senate amendment.

4. Corporate sponsorship payments received by tax-exempt organizations in connection with public events.

PRESENT LAW

Although generally exempt from Federal income tax, tax-exempt organizations are subject to the unrelated business income tax (UBIT) on income derived from a trade or business regularly carried on [1] that is not substantially related to the performance of

---

[9] It is intended that, in the case of religious organizations, a *quid pro quo* contribution (for purposes of the substantiation and disclosure requirements) is limited to an exchange of goods or services that are generally available on a commercial basis, or advertised for an established price. This would include, for example, tuition, travel and entertainment, and consumer goods.

[1] In determining whether a trade or business is regularly carried on, regard must be had to the frequency and continuity with which the business activities are conducted and the manner

Continued

the organization's tax-exempt functions (secs. 511-514). Contributions or gifts received by tax-exempt organizations generally are not subject to the UBIT. However, present-law section 513(c) provides that an activity (such as advertising) does not lose its identity as a separate trade or business merely because it is carried on within a larger complex of other endeavors.[2] If a tax-exempt organization receives sponsorship payments in connection with conducting a public event, the solicitation and receipt of such sponsorship payments may be treated as a separate activity. The Internal Revenue Service (IRS) has taken the position that, under some circumstances, such sponsorship payments may be subject to the UBIT.[3]

HOUSE BILL

The House bill directs the Secretary of the Treasury to conduct a study on the tax treatment of sponsorship payments received by charitable and other tax-exempt organizations from corporations and other sponsors in connection with athletic and cultural events, and the ramifications of IRS proposed examination guidelines contained in Announcement 92-15, 1992-5 I.R.B. 51. Within one year after the date of enactment, the Secretary is required to report the results of this study to the Senate Committee on Finance and the House Committee on Ways and Means.

As part of this study, the Treasury Department should address the following issues: (1) whether application of the "substantial return benefit" standard is appropriate for determining the UBIT treatment of sponsorship payments; (2) whether the "substantial return benefit" standard should be applied to sponsorship payments received in connection with events conducted prior to the issuance of proposed or final IRS examination guidelines; (3) application of the "regularly carried on" requirement to annual events conducted by tax-exempt organizations; and (4) the relevance of ancillary services or benefits (e.g., receptions or hospitality suites) provided by a tax-exempt organization to a corporate sponsor to the tax treatment of sponsorship payments, broadcast revenues, or royalty income received by the organization.

The committee report to the House bill urges the Treasury Department, in connection with the study, to promulgate IRS examination guidelines that enunciate clear and administrable rules for determining the tax treatment of sponsorship payments received by tax-exempt organizations.

Effective date.—The Secretary of the Treasury is required to report to Congress not later than one year after enactment the re-

---

in which such activities are pursued. Specific business activities of a tax-exempt organization will ordinarily be deemed to be regularly carried on if they manifest a frequency and continuity, and are pursued in a manner, generally similar to comparable commercial activities of taxable entities. However, certain intermittent income producing activities (e.g., an annual dance) occur so infrequently that neither their recurrence nor the manner of their conduct will cause them to be regarded as a trade or business regularly carried on. See Treas. Reg. sec. 1.513-1(c).

[2] See *United States v. American College of Physicians*, 475 U.S. 834 (1986) (holding that activity of selling advertising in medical journal was not substantially related to the organization's exempt purposes and, as a separate business under section 513(c), was subject to tax).

[3] See Announcement 92-15, 1992-5 I.R.B. 51 (announcing proposed audit guidelines distinguishing sponsorship payments in return for which there is mere acknowledgment of sponsor—and thus no UBIT liability—in contrast to sponsorship payments in return for which substantial economic benefits are conferred upon the sponsor and UBIT liability may be asserted by the IRS).

sults of a study of corporate sponsorship payments received by tax-exempt organizations.

(However, H.R. 5645 included a provision similar to the conference agreement, except that the safe-harbor rule provided for by H.R. 5645 distinguished sporting events from other public events.)

SENATE AMENDMENT

Under the Senate amendment, the term "unrelated trade or business" does not include the activity of soliciting and receiving qualified sponsorship payments with respect to any qualified public event.

"Qualified sponsorship payments" are defined as any payment by a person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use of the name or logo of such person's trade or business in connection with a qualified public event (and use by such person of the organization's name or logo). For purposes of the provision, use of a name or logo or a person's trade or business in connection with a public event does not include advertising or promotion of such person's particular products or services. For example, advertising or promotion of a sponsor's products or services not within the safe harbor provided for by the bill includes a call to action to purchase the sponsor's products, superlative description or qualitative claim about the company (or its products or services), direct comparison with other companies, price or value information, inducements to buy, or endorsements.[4]

The term "qualified public event" is defined as any public event conducted by an organization described in paragraph (3), (4), (5), or (6) of section 501(c),[5] if (1) substantially all the activities of the organization in conducting the event are not subject to the UBIT (e.g., the activities are substantially related to the exempt purposes of the organization, the activities are not regularly carried on, or the volunteer labor or some other present-law UBIT exception applies); and (2) the net proceeds from the event are used for a purpose described in section 170(c)(2)(B).[6]

Examples of public events governed by the provision include intercollegiate athletic events, concerts, museum exhibitions, State and agricultural fairs, fine-arts festivals, and charitable golf tournaments (provided that the other requirements of the provision are satisfied). Identifying a sponsor of a qualified public event (or incorporating the sponsor's name into the official name of the event) will fall within the safe harbor provided for by the provision, even

---

[4] It is intended that corporate sponsorship announcements or representations that meet the Public Broadcasting System (PBS) National Program Funding Standards and Practices generally will be considered permissible identification of a sponsor by use of its name or logo (or that of a division or subsidiary) and not advertising or promotion of the sponsor's particular products or services for purposes of the safe-harbor rule provided for by the bill. See *PBS National Program Funding Standards and Practices* (February 1990).

[5] In addition, State colleges and universities described in section 511(d)(2)(B) would be eligible for the UBIT exception provided for by the proposal.

[6] The purposes enumerated in section 170(c)(2)(B) are "religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision or athletic facilities or equipment), or for the prevention of cruelty to children or animals."

if the amount of the sponsorship payment owed by the sponsor is contingent upon a factor such as attendance or broadcast ratings.

No inference is intended as to the tax treatment under present-law rules of sponsorship (or other) payments not governed by the provision, or sponsorship payments received in connection with events held prior to the date of enactment.[7]

Effective date.—The provision is effective for sponsorship payments received in connection with events conducted after the date of enactment.

CONFERENCE AGREEMENT

Under the conference agreement, qualified sponsorship payments received by certain tax-exempt organizations in connection with qualified public events are excluded from the UBIT.

The term "qualified public event" is defined as any event conducted by a tax-exempt organization described in paragraph (3), (4), (5), or (6) of section 501(c),[8] that is either:

(1) a public event that is substantially related to the exempt purposes of the organization conducting such event, or

(2) any other public event provided that such event is the only event of that type conducted (i.e., patronized by, or broadcast to, members of the public) by such organization during a calendar year and such event does not exceed 30 consecutive days.[9]

Public events that are substantially related to the exempt purposes of the organization conducting the event (e.g., symphony concerts, museum exhibits, intercollegiate athletic events, and county and agricultural fairs) are governed by the provision, even if held for more than a 30-day period. A public event conducted once a year for a period that does not exceed 30 days also would be governed by the provision, even if the event is not substantially related to the exempt purposes of the organization (e.g., an annual vaudeville show conducted by a hospital or an annual auction or other fundraising event).

For purposes of the provision, "qualified sponsorship payments" received by a tax-exempt organization that are excluded from UBIT are defined as any payment made by a person engaged in a trade or business with respect to which the person will receive no substantial return benefit other than:

---

[7] In addition, the technical explanation to the Senate amendment expressed concern about the tax treatment of royalties and other payments that may be received by the U.S. Olympic Committee and Atlanta Committee for the Olympic Games, Inc., in connection with the 1996 Games of the XXVI Olympiad. It is expected that, under general UBIT rules (see Rev. Rul. 81-178, 1981-2 C.B. 135), royalty income derived from licensing Olympic trademarks, emblems, and designations, as well as all income from broadcasting, filming, and videotaping the Olympics will be treated as exempt from the UBIT.

[8] In addition, events conducted by State colleges and universities described in section 511(d)(2)(B) are eligible for the UBIT exception provided for by the bill.

[9] The conference agreement provides that an event will be treated as a qualified public event with respect to all qualified tax-exempt organizations that receive sponsorship payments with respect to the event if such event is a qualified public event with respect to one of such organizations, but only to the extent that such payment is used to meet expenses of such event or for the benefit of the organization with respect to which the event is a qualified public event. Thus, if a national charitable organization receives sponsorship payments with respect to several local fundraising events conducted in conjunction with local affiliates (e.g., walk-a-thons at different sites around the country), the national organization will not be subject to UBIT with respect to sponsorship payments used to meet event expenses or distributed to local affiliates (assuming the events are qualified public events with respect to the local affiliates).

(1) the use of the name or logo of the person's trade or business in connection with a qualified public event under arrangements (including advertising) in connection with such event which acknowledge such person's sponsorship or promote such person's products or services, or

(2) the furnishing of facilities, services, or other privileges in connection with such event to individuals designated by such person (e.g., tickets furnished to employees).[10]

To prevent avoidance of the 30-day rule governing unrelated events, the Secretary of the Treasury is granted authority to prescribe regulations to prevent avoidance of the purposes of the provision through the use of entities under common control.[11]

The exception provided for by the provision is in addition to other present-law exceptions from the UBIT (e.g., the exceptions for activities substantially all the work for which is performed by volunteers and for activities not regularly carried on). No inference is intended as to the tax treatment under present-law rules of sponsorship payments received in connection with events not governed by the provision (e.g., unrelated events held more than once per year or for more than 30 days) or events held by organizations that are not covered by the provision (e.g., 501(c)(10) fraternal organizations). Thus, income which is not subject to the UBIT because of one of the present-law exceptions, such as for activities that are not regularly carried on or are conducted substantially by volunteers, retain their exemption from the UBIT, even though not within the conference agreement safe-harbor rule. Further, no inference is intended as to events held prior to the date of enactment.

Olympics

The conference agreement also includes the following two rules with respect to the 1996 Games of the XXVI Olympiad:

(1) In the case of a qualified amateur sports organization described in present-law section 501(j)(2) or an organization that would be so described but for the cultural events it organizes in connection with national or international amateur sports competitions, "royalty" income excluded from the UBIT includes any income received directly or indirectly by such organization if a substantial part of the consideration therefor is the right to use trademarks, designations, or similar properties indicating a connection with the Olympic Games to be conducted in 1996 or related events or the participation of the United States Olympic Team at such Games or events.

(2) Nothing in section 514 or 512(b) shall be construed as treating any amount treated as a royalty under paragraph (1) as an item of income subject to the UBIT.

---

[10] The provision's "in connection with" requirement will be satisfied only if benefits provided to the sponsor (or individuals designated by the sponsor) are provided within a reasonable time period compared to when the qualified public event itself is patronized by (or broadcast to) the public and only if the benefits are provided in a manner reasonably related to the conduct of the public event activities (e.g., providing advertising in a program or brochure distributed to event patrons, or providing special seating at the event, or related pre- or post-event functions, to employees of the sponsor).

[11] For this purpose, it is intended that organizations that conduct public events will not be treated as under common control solely as a result of their common affiliation with a national sanctioning body.

Effective date

The provision governing qualified sponsorship payments is effective for events conducted after the date of enactment. The rules governing the treatment of certain royalty income received in connection with 1996 Games of the XXVI Olympiad are effective upon the date of enactment.

5. Improved fundraising disclosure

PRESENT LAW

Disclosure of nonexempt status

There is no rule in present-law requiring a non-profit organization that does not have Federal tax-exempt status to disclose that it is not tax-exempt under the provisions of the Internal Revenue Code. In contrast, organizations that have tax-exempt status but are *not* eligible to receive tax-deductible charitable contributions are required to expressly state in certain fundraising solicitations that contributions or gifts to the organization are not deductible as charitable contributions for Federal income tax purposes (sec. 6113). Penalties may be imposed on such organizations for failure to comply with this requirement (sec. 6710).

Information reporting and public disclosure by tax-exempt organizations

Tax-exempt organizations generally are required to file an annual information return (Form 990) with the Internal Revenue Service (IRS). However, churches (and their affiliated organizations), as well as tax-exempt organizations (other than private foundations) that normally have gross receipts in each taxable year of not more than $25,000, are not required to file a Form 990.[1] If an organization that is eligible to receive tax-deductible contributions is required to file a Form 990, then it must report its gross income for the year, expenses attributable to such income, disbursements for tax-exempt purposes, names of certain substantial contributors, and the names and compensation (and other payments) paid to certain managers and highly compensated employees (sec. 6033(b)).

Section 6104 requires a tax-exempt organization (other than a private foundation) to make available for public inspection at the organization's principal office a copy of the organization's Form 990 (except for the names of contributors to the organization) for the three most recent taxable years, as well as the organization's application to the IRS for recognition of tax-exempt status.

HOUSE BILL

Disclosure of nonexempt status

The House bill requires organizations that do not have Federal tax-exempt status, but describe themselves in an advertisement or solicitation as "non-profit," to disclose in an express statement (in a conspicuous and easily recognizable format) that such organiza-

[1] See section 6033 and Rev. Proc. 83-23, 1981 C.B. 687.

tion is not exempt from Federal income taxes.[2] Failure to make such a required disclosure will subject the organization to a civil penalty of $1,000 per day, unless such failure was due to reasonable case, up to $10,000 per calendar year. Failure to make such required disclosure where there is intentional disregard for the requirement would be subject to a penalty of the greater of (1) $1,000 per day or (2) 50 percent of the aggregate cost of the advertisements and solicitations on such day and with respect to which there was a failure, without regard to the $10,000 annual limit.

Effective date.—January 1, 1993.

Information reporting and public disclosure by tax-exempt organizations

The House bill requires tax-exempt organizations to furnish (upon request made by an individual at the organization's principal office or certain regional offices) copies of the organization's Form 990 and application for tax-exempt status. Such copies are required to be provided without charge, other than a reasonable fee for the cost of reproduction. Documents subject to this provision are currently subject to public inspection under section 6104(e).

Effective date.—January 1, 1993.

SENATE AMENDMENT

Disclosure of nonexempt status

No provision.

Information reporting and public disclosure by tax-exempt organizations

Tax-exempt organizations described in section 501(c)(3) or 501(c)(4) [3] that, under present law must file annual information returns with the IRS (and make such returns available for public inspection), are required to advise each contributor of the availability of a disclosure statement and furnish (within 30 days of a written request) such statement to each contributor (or potential contributor) who requests such statement. The statement must disclose the gross income, expenses, and exempt-purpose disbursements of the organization for the most recent taxable year, as well as the names of the five highest compensated individuals and any other individual whose compensation during the year exceeds $100,000. The statement also must disclose the amount of compensation paid to such individuals.

The provision does not apply to religious organizations, educational organizations with regular campuses, medical organizations, and organizations the gross receipts of which in each taxable year are normally not more than $100,000.

An organization furnishing a disclosure statement under the provision may require that a self-addressed, stamped envelope and a reasonable fee not to exceed $2 to cover the actual costs of copying and mailing such statement be included in the written request

---

[2] The provision applies if an advertisement or solicitation was made by, or on behalf of, an organization that is referred to as being "nonprofit" but is not exempt from Federal income tax.

[3] The provision also applies to any separate segregated fund described in section 527(f)(3).

for such statement. A penalty would be imposed for failure to comply with the provision of $50 for each day during which the failure continues, unless due to reasonable cause.

Effective date.—January 1, 1993.

CONFERENCE AGREEMENT

Disclosure of nonexempt status

The conference agreement follows the House bill.

Information reporting and public disclosure by tax-exempt organizations

The conference agreement follows the House bill. In addition, the conference agreement provides that organizations that are required to file a Form 990 are required to disclose in any advertisement or solicitation (made by the organization or on its behalf) that copies of the organization's Form 990s may be obtained directly from the organization. The disclosure must be made in an express statement, in a conspicuous and easily recognizable format, and must state that the material is available without charge other than a reasonable fee for the cost of reproduction. Failure to provide the disclosure would result in a penalty, unless such failure was due to reasonable cause, of $100 for each day such failure occurred, up to $10,000 per calendar year. If the failure is due to intentional disregard, a penalty would apply of the greater of (1) $100 or (2) 50 percent of the aggregate cost of the advertisements and solicitations which occurred on such day and with respect to which there was such a failure, without regard to the $10,000 annual limit.

If a request for an organization's Form 990 or application for recognition of tax-exempt status is made in person at the principal office of the organization (or certain regional offices), a copy of the material must be provided immediately. If the request is made other than in person at the organization's principal office, such as by telephone or by letter, then a copy of the material must be provided within 30 days. Failure to supply the requested documents would result in a penalty of $50 for each day during which the failure continues, unless reasonable cause is shown. The maximum penalty that may be imposed with respect to any one return may not exceed $5,000.

Effective date.—January 1, 1993.

6. Required notices to charitable beneficiaries of charitable remainder trusts

PRESENT LAW

Subject to certain limitations, an estate generally is allowed a deduction for transfers of property to charitable organizations, the United States, or a State or local government (sec. 2055(a)). Where a remainder interest is transferred to the charity in trust, however, a deduction is only permitted if the interest passing to the charitable remainderman is in the form of a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund (sec. 2055(e)).

In order for the estate to take the deduction authorized by section 2055, the Treasury regulations require that the executor submit a copy of the transfer instrument with the estate tax return and stipulate that no actions have been filed or are (according to the executor's information and belief) contemplated to contest the decedent's will in a manner affecting the charitable deduction claimed. Treas. Reg. sec. 20.2055-1(c).

A qualifying charitable remainder trust is generally exempt from tax unless it has unrelated business taxable income. The fiduciary of a qualifying charitable remainder trust must presently file (1) an annual information return on Form 5227 and (2) Form 1041-A unless all net income is required to be distributed currently to the beneficiaries. A charitable remainderman generally may inspect any such returns upon written request to the Internal Revenue Service (sec. 6103). Presently, the executor and trust fiduciaries generally are not required under the Code to provide any information directly to the charitable remainderman.

House Bill

No provision in H.R. 11. (However, H.R. 5636, as passed by the House, contains the same provision as included in the conference agreement as described below, except for a change in the effective date.)

Senate Amendment

No provision.

Conference Agreement

The conference agreement requires that, within 60 days of his qualification, an executor shall provide each charitable remainderman with the following information (the "Qualification Notice"): (1) the fact of the executor's qualification; (2) the name, address and date of death of the decedent; (3) the name and address of each charitable beneficiary; (4) a copy of the governing instrument relating to the transfer in trust; and (5) a description of the interest to which the charitable remainderman may be entitled, and any preliminary statements (if required by law) on the financial condition of the estate.

The conference agreement also requires that the charitable remainderman be notified of the filing of a Federal estate tax return and be provided with a copy of the pertinent parts thereof (together with such other information as may be required by form or Treasury regulation) on or before the due date for such return. If the executor has provided the Qualification Notice, this requirement is waived unless the remainderman has agreed to reimburse the fiduciary for the reasonable costs of furnishing such information.

Further, the conference agreement requires the fiduciary of each charitable remainder trust to furnish each charitable remainderman with a copy of any returns required to be filed pursuant to chapter 61 of the Code. If the fiduciary provides this information for any taxable year, this requirement is waived for each subse-

quent taxable year unless the remainderman has agreed to reimburse the fiduciary for the reasonable costs of furnishing such information.

The penalties under section 6652 are extended to any failure to furnish information required under the foregoing amendments. Accordingly, an executor or other fiduciary who fails to provide such information will be charged $10 for each day that the failure to furnish such information continues (but not in excess of $5000 for any single return).

Effective date.—The provision is effective on the date of enactment.

7. Application of private inurement rule to tax-exempt civic leagues

PRESENT LAW

A tax-exempt charitable organization described in section 501(c)(3) must be organized and operated exclusively for a charitable, religious, educational, scientific, or other exempt purpose specified in that section, and no part of the organization's net earnings may inure to the benefit of any private shareholder or individual.[1]

A tax-exempt social welfare organization described in section 501(c)(4) must be organized on a non-profit basis and must be operated exclusively for the promotion of social welfare.[2] In contrast to section 501(c)(3), however, there is no specific rule in section 501(c)(4) that prohibits the net earnings of a social welfare organization from inuring to the benefit of a shareholder or individual.

HOUSE BILL

No provision. (However, H.R. 2735 includes a provision identical to the conference agreement.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

Section 501(c)(4) is amended to provide tax-exempt status to civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, provided that no part of the net earnings of such an organization inures to the benefit of any private shareholder or individual. In addition, section 501(c)(4) is amended to provide tax-exempt status to local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, provided that the association is operated exclusively for chari-

---

[1] The private inurement restriction prohibits inurement of an organization's assets to "persons having a personal and private interest in the activities of the organization." Treas. Reg. sec. 1.501(a)-1(c). Even where no prohibited private inurement exists, however, more than incidental private benefits may be conferred upon disinterested persons such that the organization is not operated exclusively for an exempt purpose. See *American Campaign Academy* v. *Comm'r*, 92 T.C. 1053 (1989).

[2] Section 501(c)(4) also provides tax-exempt status to local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

table, educational, or recreational purposes, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Effective date.—The provision is effective on the date of enactment.

8. *Exemption from certain wagering taxes for charitable organizations*

Present Law

An excise tax is imposed on the amount of certain wagers. The rate of tax is 0.25 percent for any wager authorized under the law of the State in which accepted and 2 percent for any other wager.

An occupational excise tax of $500 is imposed on each person liable for the wagering excise tax described in the previous paragraph or engaged in receiving wagers on behalf of any person so liable. The amount of the tax is reduced to $50 in the case of persons liable for the wagering excise tax with respect to State-authorized wagers.

Wagers subject to the excise tax are those placed in a for-profit lottery or those with respect to a sports event or contest that are placed: (1) with a person engaged in the business of accepting wagers or (2) in a for-profit wagering pool. The term "lottery" does not include games in which usually wagers are placed, winners are determined, and prizes are distributed in the presence of all persons placing wagers or drawings conducted by organizations exempt from tax under Code sections 501 or 521 if no part of the net proceeds of the games inures to the benefit of any private shareholder or individual.

No excise tax is imposed on wagers placed in a wagering pool conducted by a parimutuel wagering enterprise licensed under State law, in a coin-operated device, or in a State-conducted lottery (but only if the wager is placed with the State agency conducting the lottery).

House Bill

No provision in H.R. 11. (However, H.R. 5648 as passed by the House contains the same provision as included in the conference agreement below.)

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that any organization exempt from tax under Code sections 501 or 521 and any person engaged in receiving wagers only on behalf of such organization are exempt from the occupational excise tax if the only wagers accepted by such organization (and such person) are authorized under the law of the State in which accepted.

In addition, the calculation of the wagering excise tax is changed for such organizations or persons described above. If the

amount of charitable expenditures for any calendar quarter equals or exceeds the amount of "wagering winnings" [1] of the organization for such quarter, then no wagering excise tax is imposed. If the amount of charitable expenditures for any calendar quarter is less than the amount of wagering winnings of the organization for such quarter, then the tax base for the wagering excise tax is reduced to x percent of the gross amount of wagers (where x is the percent of the organization's wagering winnings in excess of the charitable expenditures during that quarter).

For purposes of the above calculations, the charitable expenditures by an organization during any calendar quarter are the sum of (1) the amounts paid by the organization during the quarter to accomplish an exempt purpose described in Code section 170(c)(2)(B) or to acquire an asset used (or held for use) directly in accomplishing such exempt purpose and (2) the amounts permanently set aside by the organization during such quarter for such exempt purposes.

Effective date.—The provision exempting certain charitable organizations from the occupational excise tax is effective for taxes imposed for periods beginning after the date of enactment. The provision affecting the calculation of the wagering excise tax is effective for wagers placed in calendar quarters beginning after the date of enactment.

9. Conducting of certain games of chance not treated as unrelated trade or business

PRESENT LAW

Although generally exempt from Federal income tax, tax-exempt organizations are subject to the unrelated business income tax (UBIT) on income derived from a trade or business regularly carried on that is not substantially related to the performance of the organization's tax-exempt functions (secs. 511–514). Certain income, however, is exempted from the UBIT (such as interest, dividends, royalties, and certain rents), unless derived from debt-financed property (sec. 512(b)). Other exemptions from the UBIT are provided for activities in which substantially all the work is performed by volunteers and for income from the sale of donated goods (sec. 513(a)).

In addition, a specific exemption from the UBIT is provided for certain bingo games [2] conducted by tax-exempt organizations, provided that the conducting of the bingo games is not an activity ordinarily carried out on a commercial basis and the conducting of which does not violate any State or local law (sec. 513(f)).

---

[1] "Wagering winnings" are defined as the net proceeds from gambling conducted by the organization (amounts wagered minus winnings paid out on such wagers).

[2] For purposes of this exemption, the term "bingo game" is defined as any game of bingo of a type in which usually (1) the wagers are placed, (2) the winners are determined, and (3) the distribution of prizes or other property is made in the presence of all persons placing wagers in such game (sec. 513(f)(2)).

HOUSE BILL

No provision. (However, H.R. 5660 includes a provision identical to the conference agreement.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement expands the present-law exemption from the UBIT for certain bingo games to also apply to certain "other qualified games of chance." For purposes of this provision, the term "other qualified games of chance" is defined as any game of chance (other than bingo) if (1) the conducting of such game by the organization does not violate State or local law, (2) the conducting of such game by for-profit organizations would violate State or local law, and (3) no substantial part of the work in conducting such game is performed by individuals principally engaged in performing gaming services for hire.[3]

No inference is intended regarding the treatment for purposes of the UBIT of games of chance conducted by tax-exempt organizations prior to the date of enactment.

Effective date.— The provision is effective for games of chance conducted after the date of enactment.

10. Treatment of nonprofit health insurance providers

PRESENT LAW

An organization described in sections 501(c)(3) and (4) of the Code is exempt from tax only if no substantial part of its activities consists of providing commercial-type insurance (sec. 501(m)). Special rules apply to certain health insurance providers subject to this provision. In particular, present law provides a special deduction and other special rules for Blue Cross or Blue Shield organizations existing on August 16, 1986, and for other organizations that meet certain requirements and substantially all of whose activities are providing health insurance.

The special deduction (sec. 833) is provided to such organizations with respect to their health business equal to 25 percent of the claims and expenses incurred during the taxable year less the adjusted surplus at the beginning of the year. This deduction is calculated by computing surplus, taxable income, claims incurred, expenses incurred, tax-exempt income, net operating loss carryovers, and other items attributable to health business. The deduction may not exceed taxable income attributable to health business for the year (calculated without regard to this deduction).

[3] It is intended that volunteers who receive tips or payments to reimburse them for expenses incurred in connection with non-profit gaming operations not be considered to be individuals who principally engage in performing gaming services for hire. For example, individuals operating or employed by a business, such as a restaurant or bar, who also sell pull-tabs of a sponsoring tax-exempt organization as part of their regular services for such business, shall not be considered as principally engaged in performing gaming services for hire.

In addition, section 833 provides other special rules for such organizations. These special rules treat such organizations as stock insurance companies, and eliminate the otherwise applicable 20 percent reduction in unearned premium reserves.

HOUSE BILL

No provision in H.R. 11. However, H.R. 5641, as passed by the House, provides the special deduction and other special rules of section 833 to the same extent they are provided under present law to certain existing Blue Cross or Blue Shield organizations, in the case of a an organization that is not a Blue Cross or Blue Shield organization existing on August 16, 1986, and otherwise meeting the requirements of section 833 (including sec. 833(c)(2)). Under the bill, a qualifying organization receives this treatment if it is not a health maintenance organization and it is organized under and governed by State laws which are specifically and exclusively applicable to not-for-profit health insurance or health service type organizations.

Effective date.—This provision of H.R. 4651 is effective for taxable years beginning after December 31, 1991.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision of H.R. 5641.

11. Tax-sheltered annuities for Indian tribes

PRESENT LAW

Under present law, organizations that are tax-exempt under section 501(c)(3) of the Code and certain State and local government educational organizations are permitted to maintain tax-sheltered annuity plans (sec. 403(b)). Indian tribal governments are treated as States for this purpose, so certain educational organizations associated with a tribal government are eligible to maintain tax-sheltered annuity plans. However, while tax-exempt, Indian tribes are not the type of tax-exempt organization permitted to maintain tax-sheltered annuity plans.

HOUSE BILL

No provision. (However, H.R. 5656 contains a provision that is the same as the conference agreement.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that Indian tribal governments are treated the same as section 501(c)(3) organizations for purposes of the rules relating to tax-sheltered annuities.

Effective date.—Date of enactment.

12. Treatment of certain costs of private foundation in removing hazardous substances

PRESENT LAW

Tax-exempt private foundations generally are required to make annual "qualifying distributions" of a specified minimum amount called the "distributable amount" (sec. 4942). The "distributable amount" is an amount equal to 5 percent of the fair market value of the foundation's investment asset for the year, reduced by (1) any excise tax on the foundation's investment income (under sec. 4940), (2) any tax on unrelated business taxable income (under sec. 511), and (3) by carryovers of excess distributions from prior years. "Qualifying distributions" include direct expenditures to accomplish charitable purposes and grants to public charities or private operating foundations. In addition, if certain requirements are met, a qualifying distribution also may include amounts "set aside" to be paid within five years for a specific charitable project.

HOUSE BILL

No provision. (However, H.R. 5644 includes a provision identical to the Senate amendment.)

SENATE AMENDMENT

Under the Senate amendment, the distributable amount of a private foundation for purposes of section 4942 is reduced by any amounts paid or incurred (or permanently set aside) for (1) investigatory costs, (2) direct costs of removal, and (3) costs of remedial action with respect to a hazardous substance released at certain facilities which were owned or operated by the private foundation. The provision is limited to a facility that was transferred to the foundation before December 11, 1980, on which active operation by the foundation was terminated before December 12, 1980. In addition, the provision does not apply to costs that were incurred pursuant to a pending order issued to the foundation unilaterally by the President or the President's assignee under section 106 of the Comprehensive Response, Compensation and Liability Act, or pursuant to a nonconsensual judgment against the foundation in a governmental costs recovery action under section 107 of such Act. For purpose of this provision, "hazardous substance" has the meaning given to such term by section 9601(14) of the Comprehensive Environmental Compensation and Liability Act.

Effective date.—Taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

13. Unrelated business income tax treatment of mailing lists

PRESENT LAW

Tax-exempt organizations generally are subject to the unrelated business income tax (UBIT) on income derived from a trade or business regularly carried on that is not substantially related to the performance of the organization's tax-exempt functions (secs. 511–514). However, certain types of income (e.g., interest, dividends, royalties, and certain rents) are specifically excluded from the UBIT, except where derived from debt-financed property (sec. 512(b)).[1] In addition, exemptions from the UBIT are provided for income derived from activities substantially all the work for which is conducted by volunteers, which involves the selling of donated goods, and certain activities conducted by charities and educational organizations for the convenience of their members, students, patients, officers, or employees (sec. 513(a)).

Section 513(h) provides that, in the case of a tax-exempt charity (or war veterans organization) eligible to receive tax-deductible contributions, the UBIT does not apply to income from any trade or business which consists of exchanging with another such organization names and addresses of donors to (or members of) such organization, or renting such names and addresses to another such organization. Section 513(h) does not apply to sales or exchanges of donor or member lists to taxable organizations or among tax-exempt organizations other than tax-exempt charities (and certain war veterans groups) eligible to receive tax-deductible contributions.[2]

HOUSE BILL

No provision.

SENATE AMENDMENT

In the case of a tax-exempt organization eligible to receive deductible charitable contributions under section 170(c)(2) or (3), or any organization described in section 501(c)(4) ("social welfare organizations"), the UBIT does not apply to income from any trade or business which consists of (1) exchanging names and addresses of donors to (or members of) such organization with any other person, or (2) renting such names and addresses to any other person, but only if the aggregate income from such rental activity for the taxable year does not exceed 10 percent of the organization's gross revenue for that year. Thus, the provision excludes from the UBIT income from exchanges or rentals (subject to the 10-percent limitation) by a tax-exempt charity, war veterans group, or social welfare organization of mailing lists to *any* taxable or tax-exempt entity.

---

[1] In addition, interest, royalties, and rents (but not interest) paid to a tax-exempt organization by certain controlled entities are subject to the UBIT in proportion to the income of the controlled entity that would have been subject to the UBIT if derived directly by the controlling tax-exempt organization (sec. 512(b)(13)).

[2] See *Disabled American Veterans v. Commissioner*, 942 F.2d 309 (6th Cir. 1991) (holding that amounts received by a charitable organization from use of names from its mailing lists were taxable as unrelated business income and not exempt as royalties).

Effective date.—Exchanges and rentals of member (or contributor) lists before, on, or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the provision is limited to exchanges and rentals by tax-exempt charities, war veterans groups, and social welfare organizations to other tax-exempt charities, war veterans groups, or social welfare organizations. For example, the UBIT does not apply to income derived by a tax-exempt charity from exchanging its membership lists with another tax-exempt charity, war veterans group, or tax-exempt social welfare organizations described in section 501(c)(4). Similarly, if a tax-exempt social welfare organization described in section 501(c)(4) rents a list of its members either to another tax-exempt social welfare organization described in section 501(c)(4), or to a tax-exempt charity (or war veterans group) eligible to receive tax-deductible contributions, the UBIT does not apply to the income derived from that activity, provided that aggregate income from such rental activity for the taxable year does not exceed 10 percent of the organization's gross revenue for that year.[3] The provision does not apply to exchanges (or rentals) to taxable entities or any tax-exempt organization other than a tax-exempt charity, war veterans group, or social welfare organization.

No inference is intended as to whether or not revenues from mailing list activities other than those described in the provision are subject to the UBIT.

Effective date.—The provision is effective for exchanges and rentals of member lists before, on, or after the date of enactment.

C. FOREIGN PROVISIONS

1. Pass-through treatment for certain dividends paid by a regulated investment company to foreign persons

PRESENT LAW

Regulated investment companies

A regulated investment company ("RIC") is a domestic corporation that, at all times during the taxable year, is registered under the Investment Company Act of 1940 as a management company or as a unit investment trust, or has elected to be treated as a business development company under that Act (sec. 851(a)).

In addition, to qualify as a RIC, a corporation must elect such status and must satisfy certain tests (sec. 851(b)). These tests include a requirement that the corporation derive at least 90 percent of its gross income from dividends, interest, payments with respect to certain securities loans, and gains on the sale or other disposition of stock or securities or foreign currencies, or other income derived with respect to its business of investment in such stock, securities, or currencies.

---

[3] For purposes of applying the 10-percent limitation, income received during the taxable year by an organization from all exchanges and rentals to charities, war veterans groups, and social welfare organizations is aggregated.

A RIC generally is treated as a conduit for Federal income tax purposes. Conduit treatment is accomplished by permitting a RIC to deduct dividends paid to its shareholders in computing its taxable income. The amount of any distribution generally is not considered as a dividend for purposes of computing the dividends paid deduction unless the distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class (sec. 562(c)). For distributions by RICs to shareholders who made initial investments of at least $10,000,000, however, the distribution is not treated as non-pro rata or preferential solely by reason of an increase in the distribution due to reductions in administrative expenses of the company.

A RIC generally may pass through to its shareholders the character of its long-term capital gains. It does this by designating a dividend it pays as a capital gain dividend to the extent that the RIC has net capital gain (i.e., net long-term capital gain over net short-term capital loss). These capital gain dividends are treated as long-term capital gain by the shareholders. A RIC generally also can pass through to its shareholders the character of tax-exempt interest from State and municipal bonds, but only if, at the close of each quarter of its taxable year, at least 50 percent of the value of the total assets of the RIC consists of these obligations. In this case, the RIC generally may designate a dividend it pays as an exempt-interest dividend to the extent that the RIC has tax-exempt interest income. These exempt-interest dividends are treated as interest excludable from gross income by the shareholders.

The Internal Revenue Service has stated its position that if a RIC has two or more classes stock and it designates the dividends that it pays on one class as consisting of more than that class's proportionate share of a particular type of income, the designations are not effective for Federal tax purposes to the extent that they exceed the class's proportionate share of that type of income (Rev. Rul. 89-81, 1989-1 C.B. 226). Thus, in order to achieve all the tax effects provided under the Code for such RIC dividends, a capital gain dividend or an exempt-interest dividend must be pro rata within a class of RIC stock, and, with respect to any one class of RIC stock, generally cannot (under the Service's interpretation of present law) exceed that proportion of the relevant capital gain or exempt interest income of the RIC that the amount of dividends paid to shareholders of that class of stock bears to the total amount of dividends paid by the RIC.

U.S. source investment income of foreign persons

Under the Code, the United States generally imposes a flat 30-percent tax, collected by withholding, on the gross amount of U.S. source investment income payments, such as interest and dividends, to nonresident alien individuals and foreign corporations ("foreign persons") (secs. 871(a), 881, 1441, and 1442). Under treaties, the United States may reduce or eliminate such taxes. Even taking into account U.S. treaties, however, the tax on a dividend generally is not entirely eliminated. Instead, U.S. source portfolio investment dividends received by foreign persons generally are subject to U.S. withholding tax at a rate of at least 15 percent.

Interest

There is no 30-percent gross-basis U.S. tax with respect to U.S. source bank deposit interest that is not effectively connected with the conduct of a trade or business within the United States. Nor is there such a tax on the amount includible in gross income as original issue discount on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

Nor is there 30-percent gross-basis U.S. tax on so-called "portfolio interest." Portfolio interest includes interest (including original issue discount) which would be subject to the gross-basis U.S. tax but for the fact certain requirements are met with respect to the obligation on which the interest is paid, and with respect to the interest recipient (or the location of the interest recipient). Pursuant to these requirements, the obligation must be in registered form or be "foreign-targeted". The U.S. person who otherwise would be required to withhold tax must receive a statement that the beneficial owner of the obligation is not a United States person. If the obligation was issued by a corporation or a partnership, the recipient of the interest must not be a "10-percent shareholder" of the corporation or partnership. A corporate recipient of the interest must be neither a controlled foreign corporation receiving interest from a related person, nor (unless the obligor is the United States) a bank receiving the interest on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business. The payment of interest must not be to any person within a foreign country (and must not be a payment addressed to, or for the account of, persons within a foreign country) with respect to which the Treasury Secretary has determined that exchange of information is inadequate to prevent evasion of U.S. income tax by U.S. persons. This last requirement does not currently affect the exemption from tax on interest, as no such determinations have been made to date.

Capital gains

Under the Code, foreign persons generally are not subject to U.S. tax on gain realized on the disposition of stock or securities issued by a U.S. person (other than a "U.S. real property holding corporation," as described below), unless the gain is effectively connected with the conduct of a trade or business in the United States. This exemption does not apply, however, to the extent that the foreign person is a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year. Foreign persons receiving capital gain dividends from U.S. RICs have been treated as receiving capital gains not subject to U.S. tax, rather than dividends subject to the ordinary U.S. withholding tax on dividends (see Rev. Rul. 69-244, 1969-1 C.B. 215).

Under the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), as amended, gain or loss of a foreign person from the disposition of a U.S. real property interest is subject to net basis tax as if the taxpayer were engaged in a trade or business within the United States and the gain or loss were effectively connected

with such trade or business. In addition to fee ownership of U.S. real property, U.S. real property interests include (among other things) any interest in a domestic corporation unless the taxpayer establishes that the corporation was not, during a 5-year period ending on the date of the disposition of the interest, a U.S. real property holding corporation (which is defined generally to mean a corporation the fair market value of whose U.S. real property interests equals or exceeds 50 percent of the sum of the fair market values of its real property interests and any other of its assets used or held for use in a trade or business).

Under FIRPTA, a distribution by a real estate investment trust ("REIT") to a foreign person is, to the extent attributable to gain from sales or exchanges by the REIT of U.S. real property interests, treated as gain recognized by the foreign person from the sale or exchange of a U.S. real property interest. Under Treasury regulations, a REIT is generally required to withhold tax upon such a distribution to a foreign person, at a rate of 34 percent times the maximum amount of that distribution that could be designated by the REIT as a capital gain dividend (Treas. Reg. sec. 1.1445-8(a)(2), (b)(1), and (c)(2)).

In view of the nature of a REIT, an interest in a REIT may in some cases be considered to be a U.S. real property interest. However, an interest in a domestically-controlled REIT is not considered a U.S. real property interest. Also, the foreign ownership percentage of taxable appreciation in the value of a U.S. real property interest held by a domestically-controlled REIT is subject to tax in the hands of the REIT under special FIRPTA rules upon distribution of the U.S. real property interest by the REIT.

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

Under the provision, a RIC that earns certain interest income which would not be subject to U.S. tax if earned by a foreign person generally may, to the extent of such income, designate a dividend it pays as deriving from such interest income. A foreign person who is a shareholder in the RIC generally would treat such a dividend as exempt from gross-basis U.S. tax, just as if the foreign person had earned the interest directly. Similarly, a RIC that earns an excess of net short-term capital gains over net long-term capital losses, which excess would not be subject to U.S. tax if earned by a foreign person, generally may, to the extent of such excess, designate a dividend it pays as deriving from such excess. A foreign person who is a shareholder in the RIC generally would treat such a dividend as exempt from gross-basis U.S. tax, just as if the foreign person had realized the excess directly.

Interest-related dividends

Under the Senate amendment, a RIC could, under certain circumstances, designate all or a portion of a dividend as an "interest-

related dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. An interest-related dividend received by a foreign person generally would generally be exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442.

This exemption would not apply, however, to the extent that the foreign person is a 10-percent shareholder (as defined in the portfolio obligation rules) with respect to the RIC. The exemption would not apply to a dividend on shares of RIC stock unless the withholding agent has received a statement, as required under the portfolio interest rules, that the beneficial owner of the shares is not a U.S. person. The exemption would not apply to a dividend paid to any person within a foreign country (or dividends addressed to, or for the account of, persons within such foreign country) with respect to which the Treasury Secretary has determined, under the portfolio interest rules, that exchange of information is inadequate to prevent evasion of U.S. income tax by U.S. persons.

In addition, the exemption generally would not apply to dividends paid to a controlled foreign corporation to the extent such dividends are attributable to income received by the RIC on a debt obligation of a person with respect to which the recipient of the dividend is a related person. Nor would the exemption generally apply to dividends to the extent such dividend is attributable to income received by the RIC on indebtedness issued by any corporation or partnership with respect to which the recipient of the dividend is a 10-percent shareholder with respect to any entity the obligations of which are held by the RIC. In these two cases, however, the RIC remains exempt from its withholding obligation unless the RIC knows that the dividend recipient is such a controlled foreign corporation or 10-percent shareholder. To the extent that an interest-related dividend received by a controlled foreign corporation is attributable to interest income of the RIC that would be portfolio interest if received by a foreign corporation, the dividend would be treated as portfolio interest for purposes of the de minimis rules, the high-tax exception, and the same country rules of subpart F (see sec. 881(c)(4)).

The aggregate amount designated as interest-related dividends for the RIC's taxable year (including dividends so designated that are paid after the close of the taxable year but treated as paid during that year as described in section 855) generally is limited to the qualified net interest income of the RIC for the taxable year. The qualified net interest income of the RIC equals the excess of (a) the amount of qualified interest income of the RIC over (b) the amount of expenses of the RIC properly allocable to such interest income.

Qualified interest income of the RIC is the sum of bank deposit interest that currently is exempt from the gross-basis tax under section 871, short term original discount that is currently exempt from the gross-basis tax under section 871, and any interest (including original issue discount on an obligation) which is in registered form, unless it is earned on an obligation issued by a corporation or partnership in which the RIC is a 10-percent shareholder.

Where the amount designated as an interest-related dividend is greater than the qualified net interest income described above,

then the portion of the distribution so designated which constitutes an interest-related dividend will be only that proportion of the amount so designated as the amount of the qualified net interest income bears to the amount so designated.

By reason of the pro rata distribution rule of current law, the designation of all or a portion of any distribution as a qualified interest dividend generally must be pro rata with respect to all shares of the company of the same class, and may not apply specially to any share of stock as compared with any other shares of stock of the company in that same class. If the RIC has more than one class, moreover, the committee similarly does not intend to permit a RIC to designate dividends as interest-related dividends disproportionately as between classes. The committee understands that this intent is consistent with present law as interpreted by the Internal Revenue Service in Rev. Rul. 89–81. Even if the Internal Revenue Service were to have erred in its interpretation of present law, however, the committee intends for the rule announced in Rev. Rul. 89–81 to apply in the case of dividends designated as interest-related dividends or short term capital gain dividends under the provisions of the Senate amendment.

For example, assume that a RIC with only one class of stock has $5000 of qualified net interest income for the taxable year, and $5000 of other income. Assume that the RIC properly pays as a dividend $10,000 pro rata to its 1000 equal shareholders, half of whom are foreign, resulting in a $10 dividend to each shareholder. Under the Senate amendment, the RIC could designate a maximum of $5 of the amount of the dividend to any foreign shareholder as an interest-related dividend.

As another example, assume that a RIC with the same income as above has two classes of stock—common and preferred—and properly pays a dividend of $8000 to the common stockholders, and $2000 to the preferred shareholders. Under the Senate amendment, the RIC can designate $1000 of the preferred stock dividend, on a pro rata basis, as an interest-related dividend, and $4000 of the common stock dividend, on a pro rata basis, as an interest-related dividend. However, if only $3000 of the common stock dividend is designated an interest-related dividend, the difference between $3000 and $4000 could not be used to increase the $1000 cap on the amount of the preferred stock dividend that may, for tax purposes, be so designated.

Short term capital gain dividends

Under the Senate amendment, a RIC could also, under certain circumstances, designate all or a portion of a dividend as a "short term capital gain dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. For purposes of the U.S. gross-basis tax, a short term capital gain dividend received by a foreign person generally would be exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442. This exemption would not apply to the extent that the foreign person is a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year. In this case, however, the RIC remains exempt from its withholding obligation unless the RIC knows that the divi-

dend recipient has been present in the United States for such period.

The aggregate amount designated as short term capital gain dividends for the RIC's taxable year (including dividends so designated that are paid after the close of the taxable year but treated as paid during that year as described in section 855) is generally limited to the excess of (a) the RIC's net short-term capital gains over net long-term capital losses, less (b) the amount of expenses of the RIC allocable to such net gains. Where the amount so designated is greater, however, than this excess, then the portion of the distribution so designated which constitutes a short term capital gain dividend will be only that proportion of the amount so designated as the amount of the excess bears to the amount so designated. In addition, as in the case of interest-related dividends, the designation of all or a portion of any distribution as a short term capital gain dividend generally must be pro rata with respect to shares of the same class, and governed by a rule of proportionality as between different classes.

As is true under current law for distributions from REITs, the Senate amendment provides that any distribution by a RIC to a foreign person shall, to the extent attributable to gains from sales or exchanges by the RIC of an asset (for example, stock) that is considered a U.S. real property interest, be treated as gain recognized by the foreign person from the sale or exchange of a U.S. real property interest. As under current law in the case of a REIT, the committee intends that the RIC shall be required to deduct and withhold, under section 1445, a tax equal to 34 percent of the amount of the dividend so treated. The Senate amendment also extends the special rules for domestically-controlled REITs to domestically-controlled RICs.

Effective Date.—In general, the provision is effective with respect to taxable years of RICs beginning after the date of enactment. However, the provision exempting an interest in a domestically-controlled RIC from treatment as a U.S. real property interest is effective on the date the provision is enacted.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

2. Election not to apply 90-percent limitation on alternative minimum tax foreign tax credit

PRESENT LAW

In general

Under present law, U.S. citizens, residents, and corporations are subject to U.S. taxation on their worldwide incomes. The U.S. tax on foreign income may be offset by a credit for foreign income taxes incurred. Foreign corporations, including foreign corporations controlled by U.S. taxpayers, generally are subject to U.S. taxation only on income earned in the United States.

"Deferral" refers to the practice of not taxing the income of a U.S.-controlled foreign corporation until that income is distributed to the controlling U.S. shareholders. The term "deferral" is em-

ployed because the net U.S. tax liability—equal to the difference between the U.S. tax and the credit for foreign taxes—is "deferred" until such income is distributed as a dividend.

The controlled foreign corporation (subpart F) rules of the Code provide for exceptions to the general rule of deferral (secs. 951-964). Certain U.S. shareholders of a controlled foreign corporation are subject to current U.S. taxation on their pro rata portions of the foreign corporation's "subpart F income." Subpart F income typically is income that is relatively movable from one taxing jurisdiction to another and that is subject to low effective rates of foreign tax.

Alternative minimum tax foreign tax credit

Under present law, taxpayers are subject to an alternative minimum tax ("AMT"), which is payable, in addition to all other tax liabilities, to the extent that it exceeds the taxpayer's regular income tax liability. The tax is imposed at a flat rate of 20 percent, in the case of corporate taxpayers, on alternative minimum taxable income ("AMTI") in excess of a phased-out exemption amount. The rate for noncorporate taxpayers is 24 percent. Alternative minimum taxable income is the taxpayer's taxable income increased for certain tax preferences and adjusted by determining the tax treatment of certain items in a manner which negates the exclusion or deferral of income resulting from the regular tax treatment of those items.

Taxpayers are permitted to reduce their AMT liability by an AMT foreign tax credit. The AMT foreign tax credit for a taxable year is determined under principles similar to those used in computing the regular tax foreign tax credit, except that (1) the numerator of the AMT foreign tax credit limitation fraction is foreign source AMTI [1] and (2) the denominator of that fraction is total AMTI.[2]

The AMT foreign tax credit for any taxable year generally may not offset a taxpayer's entire pre-credit AMT. Rather, the AMT foreign tax credit generally is limited to 90 percent of AMT computed without an AMT net operating loss deduction, an AMT energy preference deduction, or an AMT foreign tax credit.[3] For example, assume that a corporation has $10 million of AMTI, has no AMT net operating loss or energy preference deductions, and is subject to the AMT. In the absence of the AMT foreign tax credit, the corporation's tax liability would be $2 million. Accordingly, the AMT foreign tax credit cannot be applied to reduce the taxpayer's tax liability below $200,000. Any unused AMT foreign tax credit may be carried back 2 years and carried forward 5 years for use against AMT in those years under the principles of the foreign tax credit carryback and carryforward set forth in section 904(c).

---

[1] This is modified on an elective basis by section 4422 of the bill.

[2] Similar to the regular tax foreign tax credit, the AMT foreign tax credit is subject to the separate limitation categories set forth in section 904(d). Under the AMT foreign tax credit, however, the determination of whether any income is high taxed for purposes of the high-tax-kick-out rules (sec. 904(d)(2)) is made on the basis of the applicable AMT rate rather than the highest applicable rate of regular tax.

[3] Certain domestic corporations operating solely in one foreign country with which the United States has an income tax treaty in effect are not subject to the 90-percent limitation on the use of the AMT foreign tax credit if certain other specified criteria are satisfied (sec. 59(a)(2)(C)).

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

Under the Senate amendment, a domestic corporation is permitted to elect to be exempt from the 90-percent limitation on the utilization of the AMT foreign tax credit. As explained more fully below, any corporation that does so elect, and any other domestic corporation that is related to the electing corporation, thereby foregoes the benefits of deferral with respect to the income of all controlled foreign corporations of which they are U.S. shareholders.

Domestic corporations affected by an election

The election may be made by any domestic corporation. If the election is made, the loss of deferral applies to all domestic corporations that are members of an expanded affiliated group of corporations, as defined for purposes of this election, that includes the electing corporation. On the other hand, only corporations that actually make the election are entitled to the exemption from the 90-percent limit on the use of the AMT foreign tax credit.

Under the Senate amendment, membership in an expanded affiliated group is determined by applying the affiliated group definitions of section 1504, substituting a greater-than-50-percent stock ownership threshold for the 80-percent ownership threshold. The Senate amendment treats foreign corporations as includible corporations solely for the purpose of determining whether any domestic corporation is a member of the group. Under the amendment, membership in the expanded affiliated group is determined by treating stock owned by attribution under the rules of section 1563 as owned directly. Under the amendment, a corporation is considered to be controlled if *either* the 50-percent vote *or* the 50-percent value test is met. Finally, under the Senate amendment stock is disregarded for purposes of determining expanded affiliated group membership if it is limited and preferred as to dividends and does not participate in corporate growth to any significant extent.

Loss of deferral

As described above, the benefits of deferral are foregone by any domestic corporation included in an expanded affiliated group that includes an electing corporation. Generally, all of the earnings and profits for the taxable year of a controlled foreign corporation with respect to which the domestic corporation is a U.S. shareholder are treated as subpart F income, for purposes of determining the amount of subpart F income to be included in the income of the domestic corporation pursuant to section 951. Under the amendment, as under present law, subpart F income does not include earnings and profits attributable to income from sources within the United States which is effectively connected with the conduct of a U.S. trade or business (except to the extent that the income is exempt from tax or subject to a reduced rate of taxation pursuant to a U.S. treaty obligation). Nor does subpart F income include any

foreign trade income of a foreign sales corporation (FSC). Such income remains taxable to the FSC to the extent provided under current law. Also as under present law, subpart F income is not reduced on account of certain illegal payments.

Under the Senate amendment, as under present law, certain amounts of earnings and profits are not included in subpart F income if it is established to the satisfaction of the Treasury Secretary that those amounts of earnings could not have been distributed to the U.S. shareholders because of currency or other restrictions or limitations imposed under the laws of any foreign country. The committee intends that such legal restrictions or limitations be taken into account only if they are publicly promulgated, generally applicable to all similarly situated persons (whether controlled or uncontrolled), and not actually avoided by the foreign corporation or other persons, and if the process prescribed by local law for obtaining a waiver of such restrictions, if any, has been exhausted. No inference is intended regarding the meaning of the corresponding provision of current law.

Under the Senate amendment, as under the present-law rules of subpart F, earnings and profits are determined without regard to the adjustments for LIFO inventories, installment sales, and the completed contract method of accounting that generally apply to the determination of earnings and profits, except, under regulations, to the extent that the failure to make such adjustments would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation.

For the second taxable year subject to the provision, and any subsequent taxable year, amounts of subpart F income included in the gross income of the U.S. shareholder are reduced by the shareholder's pro rata share of any deficits in earnings and profits in post-effective-date taxable years which precede that year, and for which the foreign corporation was a controlled foreign corporation.

In addition, deficits in earnings and profits (taking into account the same adjustments to earnings and profits that apply for purposes of determining subpart F income under the election) for years beginning prior to the effective date of the amendment will reduce amounts of subpart F income included in the gross incomes of U.S. shareholders only to the extent that those deficits would have reduced subpart F inclusions under the qualified deficit rules of present law.

The election under the Senate amendment applies to the taxable year for which it is first effective and to all subsequent taxable years, and may be revoked only with the permission of the Secretary of the Treasury. In the event that an expanded affiliated group is enlarged, whether by incorporation or acquisition, any prior election under the amendment by any member of the expanded affiliated group will have deferral consequences for the new member, and any prior election under the amendment by a new member will have deferral consequences for the entire expanded affiliated group.

Effective date

The Senate amendment is effective for taxable years of domestic corporations beginning after December 31, 1992, and taxable years

of controlled foreign corporations ending with or within such taxable years of domestic corporations.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

3. Income from investments by domestic gas or electric utilities in foreign gas or electric utilities

PRESENT LAW

In general

As explained above, U.S. persons generally are subject to U.S. taxation on their worldwide incomes. The U.S. tax on foreign income may be offset by a credit for foreign income taxes incurred. Foreign corporations, including foreign corporations controlled by U.S. taxpayers, generally are subject to U.S. taxation only on income earned in the United States. In limited cases, income of a U.S.-controlled foreign corporation is included, under Code section 951, in the income of U.S. persons owning stock of the foreign corporation. Such inclusions are sometimes referred to as "subpart F" inclusions.

Where stock in a foreign corporation is owned by a U.S. shareholder, the shareholder's income subject to U.S. tax generally includes the foreign corporation's earnings only to the extent of dividends received from the foreign corporation by the U.S. shareholder. When a dividend is paid, a U.S. corporation owning at least 10 percent of the voting stock of the foreign corporation is treated as if it had paid a share of the foreign income taxes paid by the foreign corporation (sec. 902(a)). This is sometimes referred to as the "indirect" or "deemed-paid" foreign tax credit. The income of the dividend recipient is increased, or "grossed up," by the amount of the indirect credit (sec. 78). An indirect foreign tax credit generally is also available to a U.S. corporate shareholder meeting the requisite ownership threshold with respect to inclusions of subpart F income from controlled foreign corporations (sec. 960(a)). [1]

A U.S. corporation may also be deemed to have paid taxes paid by a second- or third-tier foreign corporation. That is, where a first-tier foreign corporation pays a dividend to a 10-percent-or-more U.S. corporate shareholder, then for purposes of deeming the U.S. corporation to have paid foreign tax, the first-tier foreign corporation may be deemed to have paid a share of the foreign taxes paid by a second-tier foreign corporation of which the first-tier foreign corporation owns at least 10 percent of the voting stock, and from which the first-tier foreign corporation received dividends. The same principle applies to dividends from a second-tier or third-tier foreign corporation. No taxes paid by a second- or third-tier foreign corporation are deemed paid by the first- or second-tier foreign corporation, respectively, unless the product of the percentage owner-

[1] Unlike the indirect foreign tax credit for actual dividend distributions, the indirect credit for subpart F inclusions can be available to individual shareholders in certain circumstances if an election is made (sec. 962).

ship of voting stock at each level from the U.S. corporation down equals at least 5 percent (sec. 902(b)). Under present law, foreign taxes paid below the third tier of foreign corporations are not eligible for the indirect foreign tax credit.

Foreign tax credit limitation

The foreign tax credit is limited by the amount of U.S. tax otherwise payable on foreign source taxable income. For purposes of the foreign tax credit limitation, foreign source taxable income is computed by (1) determining the items of gross income that are from foreign sources, and then (2) subtracting from those items the taxpayer's deductions that are allocated or apportioned to foreign source gross income. Generally it is left to the Treasury to provide detailed rules for the allocation and apportionment of expenses.

In the case of interest expense, the Code and the regulations generally are based on the approach that money is fungible and that interest expense is properly attributable to all business activities and property of a taxpayer, regardless of any specific purpose for incurring an obligation on which interest is paid. (Exceptions to the fungibility concept are recognized or required, however, in particular cases.) The Code provides that for interest allocation purposes all members of an affiliated group of corporations generally are to be treated as a single corporation (the so-called "one-taxpayer rule"), and that allocation must be made on the basis of assets rather than gross income.

The term "affiliated group" in this context is defined by reference to a modified version of the rules for determining whether corporations are eligible to file consolidated returns. An affiliated group generally excludes any corporation that is foreign, and any corporation less than 80 percent of the stock of which is owned by members of the affiliated group (see Treas. Reg. sec. 1.861-11T(d)(6)(i)).

House Bill

No provision.

Senate Amendment

In general

The Senate amendment provides that certain U.S. affiliated groups predominantly engaged in regulated gas or electric utility operations may elect, for purposes of allocating interest to determine their foreign tax credit limitations, to treat their investments in the stock of certain foreign utility companies as if the U.S. affiliated group owned a proportionate share of the foreign utility's assets, and incurred a proportionate share of the foreign utility's interest expense. If the election is made, the U.S. affiliated group is taxable currently on its share of the earnings of certain foreign corporations in which it owns stock. Thus the Senate amendment permits the U.S. affiliated group to make an election whereby, in exchange for foregoing the benefits of deferral, it avoids double-counting the amount of interest expense treated as the cost of hold-

ing the assets of the foreign utility companies in whose stock the U.S. affiliated group has invested.

Qualified utility group

An election under the Senate amendment can only be made with respect to a qualified utility group. Once made, the election applies to the year for which made and all subsequent years unless revoked with the consent of the Secretary. The amendment defines such a group as any affiliated group (within the meaning of the one-taxpayer rule applicable for interest allocation purposes) with respect to which four criteria are met.

First, at least 80 percent of the group's gross income must be attributable to the production, transmission, or distribution of electricity, or the distribution of gas. Second, no more than 65 percent of the average daily total capital of the group for the taxable year can take the form of debt. Third, at least one member of the group must be regulated by one or more State regulatory commissions with respect to the distribution of gas or electricity. Fourth, if the affiliated group is a member of an "expanded affiliated group," as that term is described in Item 2, above ("Election not to apply 90-percent limitation on alternative minimum tax foreign tax credit"), then the affiliated group cannot be considered a qualified utility group if the first three criteria are not met with respect to the expanded affiliated group.

Foreign regulated gas or electric utilities

If the election is made, then the Senate amendment changes, among other things, the interest allocation treatment of certain investments by qualified utility group members in foreign corporations that are foreign regulated gas or electric utilities. In order to be an investment that gives rise to this interest allocation change, the investment must be in the form of direct ownership of voting stock in the foreign corporation, in a proportion sufficient to permit the group member to receive deemed-paid credits for taxes paid by the foreign corporation. Thus, the investment must include direct ownership by members of the qualified utility group of at least 10 percent of the voting stock of the foreign regulated gas or electric utility.

In order for the foreign corporation to be a foreign gas or electric utility, at least 80 percent of its gross income must be attributable to the production, transmission, or distribution of electricity, or the distribution of gas. No more than 65 percent of the average daily total capital of the corporation for the taxable year can take the form of debt. Finally, the activities of the foreign corporation described above must be regulated by one or more regulatory commissions established pursuant to foreign law.

Effect of the election

Making the election results in a number of consequences. These include the loss of deferral on the earnings of certain foreign corporations, and modification of the rules under which interest is allocated for purposes of computing the foreign tax credit limitation.

Loss of deferral

Any investment of a member of the qualified utility group, or of any member of the expanded affiliated group (as that term is described in Item 2, above ("Election not to apply 90-percent limitation on alternative minimum tax foreign tax credit") to which any member of the qualified utility group belongs, which investment may result in the member being entitled to credits for foreign income taxes paid by a foreign corporation, results in treatment of the foreign corporation as a controlled foreign corporation of which the group member is a U.S. shareholder. (Thus, second- and third-tier foreign corporations may be treated as controlled foreign corporations as a result of the election.) Second, all of the earnings of all foreign corporations that are (or are treated under the election) as controlled foreign corporations are treated as subpart F income, as described in Item 2, above ("Election not to apply 90-percent limitation on alternative minimum tax foreign tax credit").

Interest allocation

Under the Senate amendment, the interest expense of any qualified utility group which is subject to the election is allocated and apportioned based upon two hypothetical allocations and apportionments taking into account the assets and interest expense of any foreign regulated gas or electric utility that is a member of the so-called "expanded group." The "expanded group" for purposes of allocating interest is the qualified utility group, plus any foreign regulated gas or electric utility in which the qualified utility group members directly own voting stock in a proportion sufficient to permit the qualified utility group members to receive credits for foreign income taxes paid by the foreign corporation. (Thus, only the assets and expenses of first-tier foreign corporations are taken into account for this purpose.)

First, a hypothetical interest allocation is performed as if the qualified utility group members had directly owned their pro rata shares of the assets of, and had directly incurred their pro rata shares of the interest expenses of, the foreign corporations in the expanded group. The pro rata shares generally are determined, for this purpose, by reference to the same proportion that determines the pro rata share income inclusions under subpart F (as applied after taking into account the election). They are to be appropriately reduced, however, to take into account the extent (if any) to which subpart F inclusions are reduced because of the blocked income rule.

The amount of interest that would be allocated and apportioned to foreign source gross income on the basis of adding the pro rata share of any foreign regulated gas or electric utility's interest and assets to the interest and assets of the qualified utilities group, as described above, is then reduced to arrive at the amount of qualified utility group interest actually allocated and apportioned to foreign source income. The reduction equals the amount resulting from a second hypothetical allocation and apportionment, namely, the amount of interest that would be allocated and apportioned to foreign source gross income taking into account only the pro rata share of the assets of the foreign regulated gas or electric utility,

and the pro rata share of the interest expense incurred by the foreign regulated gas or electric utility. If there is more than one such foreign corporation in the expanded group, they are treated as a single corporation for this purpose.

If the amount of interest that would be allocated and apportioned to foreign source gross income, taking into account only the interest and assets of the foreign regulated gas or electric utility (or utilities), is equal to or greater than the amount that would be so allocated and apportioned considering the expanded group as a whole, then the interest expense of the members of the qualified utility group generally will not be apportioned to gross income from foreign sources. On the other hand, if the latter amount is greater than the former, then the interest expense of the qualified utility group generally will be apportioned to gross income from foreign sources to the extent of the difference.[2]

Consistent with the rules governing interest allocation under current law, it is intended that borrowings between the qualified utility group and the affected foreign regulated gas or electric utilities, and stockholdings in the foreign regulated gas or electric utilities, will be eliminated for purposes of determining the total interest expense of the relevant corporations, computing the reduction in foreign-allocated interest expenses to account for foreign regulated gas or electric utilities, and computing appropriate asset ratios.

Examples

Assume that a member of a group of U.S. corporations, an affiliated group for purposes of the one-taxpayer interest allocation rules, owns 10 percent of the stock of a foreign corporation. Assume that each corporation owns operating assets valued at $10,000 for these purposes, each has debt to unrelated parties of $5000, and each has interest expense of $500 on that debt. Assume that none of this interest would be directly allocated to any particular stream of gross income under current law. All of the operating assets of the U.S. corporation produce U.S. source income, and all of the operating assets of the foreign corporation produce foreign source, general limitation income. A foreign country levies tax on the income of the foreign subsidiary at a 34-percent rate. The U.S. affiliated group is a qualified utility group, and the foreign corporation is a foreign regulated gas or electric utility. Together the qualified utility group and the foreign corporation form an "expanded group" as that term is used in the provision.

Assume that the affiliated group and the foreign corporation are calendar year taxpayers, and that the qualified utility group makes an election for its 1993 taxable year under the Senate amendment. Assume that the foreign corporation's pre-tax earnings and profits for 1993 equal $500. Assume that the foreign corporation has no earnings or foreign income taxes in any prior year, and that the

[2] In either case, allocation and apportionment of interest expense of the qualified utility group to gross income from foreign sources may still occur pursuant to the Secretary's existing regulatory authority, including the authority to make direct allocations. The Senate amendment is not intended to change the scope of that authority, except insofar as other changes in the law brought about by the amendment (e.g., the loss of deferral) would necessitate adjustments in the interest allocation regulations.

foreign corporation bears $170 in foreign income taxes for 1993. Assume that the qualified utility group earns $1000, before taking into account interest deductions, in taxable income from its U.S. operations.

Under the Senate amendment, the qualified utility group includes an additional $50 in income under subpart F (taking into account $17 of the foreign corporation's foreign taxes deemed paid under Code section 960 and the resulting gross-up), its pro rata share of the $500 of pre-tax earnings and profits of the foreign corporation. Thus, pre-credit U.S. tax on the qualified utility group equals 34 percent of $550, or $187. Further under the Senate amendment, the qualified utility group is treated for interest allocation purposes as having $11,000 in assets, $1000 of which generate foreign source income, and having $550 in interest expense. One eleventh, or $50, of this interest expense is hypothetically apportioned to foreign source gross income. That expense is then reduced by the amount of the pro rata portion of the interest expense of the foreign corporation ($50) that would be apportioned to foreign source income taking into account only the pro rata portion of the assets of the foreign corporation ($1000). In the example, all of those assets produce foreign source income, so the reduction is the full amount of the $50 pro rata share of the foreign corporation's interest expense. Thus, none of the qualified utility group's interest expense is allocated or apportioned to foreign source gross income. For purposes of computing the foreign tax credit limitation, then, the qualified utility group's foreign source taxable income equals $50, the full amount of the subpart F inclusion under the Senate amendment. The foreign tax credit limitation equals one eleventh of $187, or $17, which is the full amount of foreign taxes deemed paid by the qualified utility group.

As another example, assume the same facts as above, except that the foreign corporation has only $400 of interest expense. Assume no changes in the assets, earnings and profits, or taxes of the foreign corporation. As a consequence, $9.09 of interest expense incurred by the qualified utility group is allocated and apportioned to foreign source gross income ($49.09, or one eleventh of $540, minus $40). Foreign source taxable income is thus $40.91, or $50 minus $9.09. The foreign tax credit limitation of the qualified utility group is $13.91, or $187 times $40.91 divided by $550.

Effective date.—The provision applies to taxable years of domestic corporations beginning after December 31, 1992, and to taxable years of foreign corporations which end with or within such taxable years of domestic corporations.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

4. Commodities income of a controlled foreign corporation

PRESENT LAW

As explained above, when a U.S.-controlled foreign corporation earns so-called "subpart F income," the United States generally

taxes the corporation's 10-percent U.S. shareholders currently on their pro-rata share of that income.

One category of income that is considered subpart F income is "foreign personal holding company income." Foreign personal holding company income generally consists of passive types of income such as interest, dividends, annuities, and net gains from the disposition of certain types of property. Subject to a number of exceptions, foreign personal holding company income includes the excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. Under one such exception, gains and losses from commodities transactions are not taken into account for purposes of measuring foreign personal holding company income if they are "active" business gains or losses from the sale of commodities, but only if *substantially all* of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities.[1]

Current temporary regulations interpret the statute by determining the amount of business that is "substantially all" of the CFC's business using a taxable income test.[2] Under the regulations, substantially all of a controlled foreign corporation's business is considered to be as an active producer, processor, merchant, or handler of commodities if its active commodities business operations give rise to at least 85 percent of its taxable income for the taxable year.

The legislative history to the Tax Reform Act of 1986 specified that the exception for active producers, processors, merchants, and handlers of commodities applies only to foreign corporations actively engaged in commodities business.[3] It does not apply to foreign corporations primarily engaged in such financial transactions as the trading of futures. In order to be engaged in the active conduct of a commodities business, a controlled foreign corporation generally must hold commodities as inventory or similar property and incur substantial expenses in the ordinary course of a commodities business.[4] Regularly taking delivery of physical commodities generally indicates the existence of an active commodities business, but it does not of itself determine the issue. Other characteristics of companies actively engaged in commodities business include: engaging in substantial processing activities and incurring substantial expenses with respect to commodities prior to their sale, including (but not limited to) concentrating, refining, mixing, crushing, aerating, and milling; engaging in significant activities and incurring substantial expenses relating to the physical movement, handling, and storage of commodities, including (but not limited to) preparation of contracts and invoices, arrangement of freight, insurance, or credit, arrangement for receipt, transfer, or negotiation of shipping documents, arrangement of storage or warehousing, and dealing with quality claims; owning and operating physical facilities used in the activities described above; owning or chartering

---

[1] Other exceptions to the subpart F income classification of commodities gains and losses include an exception for bona fide hedging transactions and an exception for certain foreign currency gains and losses.

[2] Temp. Treas. Reg. sec. 1.954-2T(f)(3)(iv).

[3] S. Rep. No. 99-313, 99th Cong., 2d Sess. 367 (1986).

[4] Temp. Treas. Reg. sec. 1.954-2T(f)(3)(iii).

vessels or vehicles for the transportation of commodities; and producing the commodities sold.[5]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the exception from the definition of foreign personal holding company income for active business gains and losses from the sale of commodities. Under the Senate amendment, active business gains and losses from the sale of commodities by a controlled foreign corporation as an active producer, processor, merchant, or handler of commodities are not taken into account for purposes of determining the foreign corporation's foreign personal holding company income. Thus, the Senate amendment eliminates the "substantially all" requirement of present law. As under present law, the exception does not apply to any gains or losses of a foreign corporation derived from primarily financial transactions (e.g., the trading of commodities futures), even if the foreign corporation also is engaged in an active commodities business as a producer, processor, merchant, or handler. The Senate amendment does not alter the present-law criteria for determining whether a foreign corporation is an active producer, processor, merchant, or handler of commodities. Thus, for example, in order to exclude commodity gains and losses under the active business exception, a controlled foreign corporation must hold the commodity giving rise to the gain or loss as inventory or similar property, and must regularly engage in the production, processing, or handling and storage of the commodity.

Effective date.—Taxable years of foreign corporations beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

5. Treasury study on competitiveness

PRESENT LAW

The United States imposes taxes that may affect economic behavior, as do other countries.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the Secretary of the Treasury is to conduct a study of tax issues relating to the maintenance and enhancement of the competitiveness of the American economy in

---

[5] S. Rep. No. 99-313, at 367-368.

light of changing economic policies in Europe and the increasing globalization of the world economy. The Treasury is to report on the study to the Senate Committee on Finance and the House Committee on Ways and Means by January 1, 1994.

CONFERENCE AGREEMENT

The conference agreement does not include the provision.

6. Denial of deductions allocable to Cuban source income of a controlled foreign corporation

PRESENT LAW

In general

Under present law, U.S. citizens, residents, and corporations are subject to U.S. taxation on their worldwide incomes. The U.S. tax on foreign income may be offset by a credit for foreign income taxes incurred. Foreign corporations, including foreign corporations controlled by U.S. taxpayers, generally are subject to U.S. taxation only on income earned in the United States.

The income of a foreign corporation with U.S. shareholders generally is not subject to U.S. tax until that income is distributed to the U.S. shareholders. That is, the net U.S. tax liability on such income—equal to the difference between the U.S. tax and the credit for foreign taxes—is deferred until the income is distributed as a dividend.

The controlled foreign corporation (subpart F) rules of the Code provide for exceptions to the general rule of deferral (secs. 951–964). Certain U.S. shareholders of a controlled foreign corporation are subject to current U.S. taxation on their pro rata portions of the foreign corporation's "subpart F income." Subpart F income typically is income that is relatively movable from one taxing jurisdiction to another and that is subject to low effective rates of foreign tax.

Income from certain foreign countries

Subpart F income also includes certain income relating to international boycotts and other public policy or foreign policy considerations (defined in sec. 952(a)(3)–(5)). One category of such income is income derived from any foreign country during a period in which the taxes imposed by that country are denied eligibility for the foreign tax credit under section 901(j) pursuant to the implementation of U.S. foreign policy ("subpart F listed country income"). The rules of section 901(j), discussed below, apply to any foreign country (1) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act, (2) with respect to which the United States has severed diplomatic relations, (3) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or (4) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorism. Rev. Rul. 92–63, 1992–33 I.R.B. 7, lists the following

countries as currently subject to the rules of Code section 901(j): Afghanistan, Angola, Cambodia, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam.

In determining the amount of a controlled foreign corporation's subpart F income to be included in the gross income of a U.S. shareholder, the amount of subpart F listed country income is reduced (under Treasury regulations) so as to take into account deductions, including taxes, properly allocable to that income (sec. 952(a)).

Foreign tax credit

U.S. corporate shareholders of a controlled foreign corporation who include subpart F income in their own gross incomes are also treated as having paid the foreign taxes actually paid by the controlled foreign corporation on that income, to the same general extent as if they had received a dividend distribution of that income (sec. 960). Therefore, the U.S. corporate shareholders may claim foreign tax credits for those taxes to the same general extent as if they had received a dividend.

Pursuant to special rules applicable to taxes paid to certain foreign countries, however, no foreign tax credit is allowed for income, war profits, or excess profits taxes paid, accrued, or deemed paid to a country which satisfies specified criteria, to the extent that the taxes are with respect to income attributable to a period during which such criteria were satisfied (sec. 901(j)). Nor can such income be sheltered from U.S. tax by other creditable foreign taxes. Taxes treated as noncreditable under this provision are permitted to be deducted notwithstanding the fact that the taxpayer elects use of the foreign tax credit for the taxable year with respect to other taxes.

SENATE AMENDMENT

The Senate amendment restricts the availability of certain deductions to reduce amounts of subpart F listed country income included in the gross incomes of U.S. shareholders. Specifically, the Senate amendment denies such reductions of subpart F listed country income on account of deductions for expenses allocable to Cuban source income (as defined by the amendment specifically for this purpose). Thus, amounts of subpart F listed country income are included in the incomes of the U.S. shareholders without reduction on account of any otherwise-deductible expenses to the extent such income meets the amendment's definition of Cuban source income. The amendment does not affect the gross amount of subpart F listed country income as determined with respect to Cuba.

The Senate amendment defines Cuban source income, for purposes of its deduction-disallowance rule, to include income treated as derived from sources in Cuba under the source rules generally applicable under the Code, as well as (1) any income from the sale of goods either if the goods sold are ultimately delivered for use in Cuba or if any portion of the value of the goods sold was added in Cuba, and (2) any income from the provision of services either if the services are performed in Cuba or if Cuban residents or citizens performed the services.

Effective date.—The Senate provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

7. Source of rental income from leases of certain aircraft

PRESENT LAW

The source of income or loss from the rental of personal property generally depends on whether the property is used inside or outside the United States. Rents or royalties from property (or interests in property) located in the United States, and rents or royalties for the use of or privilege of using intangible property in the United States are sourced domestically. Correspondingly, rents or royalties from property (or interests in property) located outside the United States, and rents or royalties for the use of or privilege of using intangible property outside the United States are sourced foreign.

Income derived by the lessor of a vessel or aircraft is sourced domestically to the extent that the vessel or aircraft is used for transportation that begins and ends in the United States. If the transportation begins in the United States and ends in a foreign country, or begins in a foreign country and ends in the United States, 50 percent of the lessor's income attributable to that transportation is sourced domestically, and 50 percent is sourced foreign. The same sourcing rules apply to any other income derived from, or in connection with, the use, or hiring or leasing for use, of a vessel or aircraft or the performance of services directly related to the use of such vessel or aircraft. All such income is referred to under the Code as "transportation income."

A principal deduction associated with the ownership of vessels or aircraft is depreciation. The cost of aircraft is recovered under the Accelerated Cost Recovery System (ACRS), which provides an accelerated depreciation method over a recovery period that is generally shorter than the economic life of the property. Under ACRS, the applicable recovery period for commercial aircraft is generally 7 years. As a general rule, the cost of property which is used predominantly outside the United States, or which is used by a government or international organization, is generally not eligible for these ACRS allowances, and instead is recovered under the less beneficial alternative depreciation system (ADR). Under the ADR, the recovery period for commercial aircraft is generally 12 years. However, aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States is not considered property which is used predominantly outside the United States, and therefore, is eligible for depreciation under ACRS.

Typically, under a lease financing of equipment (i.e., the equipment is purchased by a financial institution and leased to the user), the lease produces a tax loss during its early years to the lessor (primarily as a result of accelerated depreciation or amortization

deductions). To the extent that the equipment is used in transportation ending or beginning in a foreign country, the loss arising on the lease is considered at least in part to be a foreign source loss under the generally applicable source rules described above. The characterization of the loss as foreign source operates to reduce the lessor's foreign source taxable income and thus its foreign tax credit limitation. Under certain circumstances, this might restrict the lessor's ability in a given year to use a foreign tax credit which would otherwise be available in that year, for foreign taxes paid with respect to its other foreign operations.

Prior law

Transportation income prior to the Tax Reform Act of 1986—in general

For income earned in transporting persons and cargo from the United States to a foreign country, or between two foreign countries, and income earned in leasing the vessels or aircraft used in such transportation, source determination under the law prior to the Tax Reform Act of 1986 was dependent on the type of income produced. If the income was from transportation services income (e.g., time or voyage charter hire) the income was sourced under Treasury regulations. These regulations provided that taxable income or loss generally was allocated between U.S. and foreign sources in proportion to the expenses incurred in providing the services. Expenses incurred outside the territorial waters of the United States were treated as foreign for purposes of this calculation. Therefore, under prior law, most of the income earned in transporting persons and cargo from the United States to a foreign country, or between two foreign countries, was foreign source regardless of whether it was rental or transportation services income.

Prior to 1971, if the income was rental income (e.g., bareboat charter hire), it was foreign source to the extent allocable to periods when the vessel (or aircraft) was outside the United States and its territorial waters (i.e., outside the three-mile limit). Correspondingly, tax losses generated by lessors in finance-leasing transactions prior to 1971 could operate to reduce lessors' foreign source taxable income and thus their foreign tax credit limitations. Under certain circumstances, this might restrict the lessor's ability in a given year to use a foreign tax credit which would otherwise be available in that year, for foreign taxes paid with respect to its other foreign operations.

Leasing income under the Revenue Act of 1971

In the case of ships and aircraft, which often are financed through long-term leases from financial institutions, lessors expressed concern about the loss of foreign tax credits prior to 1971. Under the Revenue Act of 1971, lessors of certain ships and aircraft were given an election to treat all income and loss from the rental of the ships or aircraft as income from sources within the United States. Under this election, income derived from the lease or disposition of vessels and aircraft that were section 38 property and were manufactured or constructed in the United States and leased to U.S. persons generally was treated as wholly U.S. source

income (former Code sec. 861(e)). These rules applied regardless of where the vessel or aircraft was used. They did not apply, however, in a case where the taxpayer owning the vessel or aircraft was a member of the same controlled group of corporations as the lessee.

Regulations under the 1971 Act provided that a vessel or aircraft would be treated as manufactured or constructed in the United States if 50 percent or more of the basis of the craft on the date of the lease to a United States person is attributable to value added within the United States (former Treas. Reg. sec. 1.861-9(b)(2); see also sec. 1.861-9A(b)(5)).

Expenses, losses, and deductions incurred in leasing vessels and aircraft under the circumstances described above were allocated entirely against U.S. source income.

The legislative history of the Revenue Act of 1971 indicates that the purpose of the election enacted at that time was to facilitate the shifting of depreciation deductions and investment tax credits to those providing financing to the operators of vessels and aircraft and to reflect a view that the rentals paid to a financial institution under such a lease-financing transaction should be treated as interest for source of income purposes:

One of the principal means available to finance the purchase of ships or aircraft is a leasing arrangement under which a financial institution purchases the ship or aircraft and then leases it to the air carrier or ship operator under an arrangement which is essentially similar to a sale of the ship or aircraft and a loan for the purchase price. The financial institution, which is allowed depreciation with respect to the ship or aircraft under present law and will be allowed the investment credit under the bill, in effect, passes all or a portion of these tax benefits on to the lessee in the form of reduced rentals for the ship or aircraft. In many cases this type of lease-financing transaction is the only means by which an air carrier or ship operator may obtain the financing needed to acquire the new equipment.

A problem has been called to the attention of the committee with respect to the present treatment of these transactions which unless corrected, in effect, will make this type of financing unavailable with respect to ships or aircraft which are to be used in international commerce. Typically, under a leasing transaction of this type, the lease produces a tax loss during its early years to the lessor (primarily as a result of the depreciation deduction). Where the leased ship or aircraft is used in international commerce, the loss arising on the lease is considered to be a foreign source loss under the generally applicable source rules. The characterization of the loss as foreign source in combination with the limitation on the foreign tax credit can have the effect of causing the financial institution to lose a foreign tax credit to which it would otherwise be entitled for foreign taxes paid with respect to its foreign banking or other financial operations. This has the result of making this type of financing transaction substantially less attractive to the financial institution than a financing transaction involving equipment to be used in the United States. Moreover, if the "rentals" were considered to be interest, which in reality they are, the problems would not arise since under the generally applicable source

rules interest paid by a U.S. person generally is considered to be from U.S. sources.

The committee believes that it is desirable for this type of financing to be available in the case of ships and aircraft which are to be used in international commerce. Unless this means of financing is made available, the investment credit which is provided by the committee's bill will not, in effect, be available with respect to ships or aircraft and thus will not have the stimulative effect in these sectors of the economy which the committee considers desirable and necessary. Moreover, the committee considers it more appropriate to view the "rentals" paid to a financial institution under a lease-financing transaction of this type as interest for source of income purposes.[1]

Leasing income under the Miscellaneous Revenue Act of 1980

Domestic sourcing of such income and loss was made mandatory in the Miscellaneous Revenue Act of 1980, and not repealed until the Tax Reform Act of 1986. In converting the election to a mandatory rule, the legislative history of the 1980 Act reflects a view that income unlikely to be subject to foreign income tax need not be sourced foreign:

Where the lease property is a vessel, aircraft, or spacecraft used in international traffic, the present rules governing the source of income derived from the lease of personal property appear to produce results which by that standard [viz., a standard that assigns a foreign source to that income which might reasonably be subject to foreign tax] are somewhat anomalous. The present source rules for rental income turn on the physical location of the property—the income is U.S. source if the property is physically located in the United States, foreign source if it is not. Where a U.S. taxpayer operates a ship, aircraft, or spacecraft in international traffic, the operating income occasionally is subject to tax by a country in which the operations are temporarily conducted; therefore, it is not unreasonable to treat operating income as foreign source where the craft is used outside the United States. However, where the craft is leased to the U.S. operator by another U.S. taxpayer, it evidently is very unlikely that any foreign government will attempt to tax the lease payments received by the U.S. lessor from the U.S. operator even if the craft is located outside the United States. (This is particularly true where the craft seldom, if ever, is located in a foreign country.) [2]

Leasing income under the Tax Reform Act of 1986

In connection with the revision of the transportation income source rules generally, the Tax Reform Act of 1986 also eliminated the distinction between the source of operating income, on the one hand, and leasing income, on the other. The legislative history indicated a belief that the prior law provisions that allowed lessors to treat losses (or income) from the lease of an aircraft as wholly U.S. source income did not reflect economic reality. It was believed that

---

[1] Sen. Rep. No. 92-437, 92d Cong., 1st Sess. 78 (1971).

[2] H.R. Rep. No. 96-1278, 96th Cong., 2d Sess. 24 (1980); Sen. Rep. No. 96-1036, 96th Cong., 2d Sess. 16-17 (1980).

the income or loss should be sourced under the rules that apply to U.S. taxpayers generally.[3] Thus, just as the Code provides that the owner of equipment takes the same depreciation deductions whether that owner is the operator or simply the lessor of the equipment in a finance lease transaction, the 1986 Act provided that the amount of vessel or aircraft depreciation allocated and apportioned to foreign source income is the same whether the owner of the vessel or aircraft is the operator of the equipment or is the owner in a finance lease transaction. The 1986 Act provisions are generally effective for taxable years beginning after December 31, 1986. Leasing income continues to be sourced under prior law for income attributable to assets owned on January 1, 1986 (or January 1, 1987 for certain lessors), if the asset were first leased before such date.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides for domestic sourcing of transportation income attributable to the leasing of aircraft (excluding containers) manufactured in the United States directly or indirectly to, and for use by, a resident of the United States. Such income is sourced entirely domestically. Any associated loss is intended to be allocated solely to U.S. source gross income.[4] For purposes of the Senate amendment, the term "United States resident" is defined by reference to the definition under rules for sourcing gains from certain personal property sales, which definition includes any corporation, trust, or estate which is a U.S. person, and any individual who is a U.S. citizen, or who is a resident alien with either a tax home in the United States or without a tax home in a foreign country.

Effective date.—Income derived from lease agreements entered into after July 1, 1993, in taxable years ending after such date.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

D. EMPLOYEE BENEFIT PROVISIONS

1. Deductibility of certain flight-training expenses

PRESENT LAW

Under prior law, eligible veterans who attended flight-training courses could receive educational assistance allowances from the Veterans' Administration of up to 90 percent of the costs incurred by the veteran (38 U.S.C. sec. 1677). These reimbursements were excludable from the income of the veteran. The education assistance allowances were repealed in 1981 (Public Law 97-35, sec.

---

[3] H.R. Rep. No. 99-426, 99th Cong., 1st Sess. 370 (1985); Sen. Rep. No. 99-313, 99th Cong., 2d Sess. 339 (1986); Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., *General Explanation of the Tax Reform Act of 1986,* at 927 (1987);

[4] *See, e.g.,* 138 Cong. Rec. S15365 (daily ed., Sept. 26, 1992) (remarks of Sen. Sasser).

2003). Certain taxpayers both excluded the allowance from their income and deducted the full cost of attending the flight-training course based on their belief that the course either maintained or improved skills required for their trade or business. The Internal Revenue Service took the position that no deduction was allowed to the extent that the expenses had been reimbursed by the Veterans' Administration. See, Rev. Rul. 80-173, 1980-2 CB 60, distinguishing and clarifying Rev. Rul. 62-213, 1962-2 CB 59. The position of the IRS was upheld in *Manocchio v. Comm.*, 710 F.2d 1400 (9th Cir. 1983), *Olszenski v. Comm.*, 55 AFTR 2d 85-536 (1st Cir. 1985), and several Tax Court cases; the position of the IRS was determined to be arbitrary in *Baker v. United States*, 748 F.2d 1465 (11th Cir. 1984).

HOUSE BILL

No provision in H.R. 11. (However, H.R. 1168 as passed by the House contain the same provision as in the conference agreement below).

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

For all taxable years before 1980, the deductibility of flight-training expenses is to be determined without regard to whether such expenses were reimbursed through veterans educational assistance allowances. In addition, the provision allows a taxpayer to file a claim for a refund or credit of taxes that were overpaid as a result of the provision if the claim is filed prior to the close of the 1-year period beginning on the date the provision is enacted. This 1-year period for making the claim for refund applies without regard to whether the taxpayer is otherwise barred (for example, by the expiration of the statute of limitations or by *res judicata*) for receiving a refund or credit.

Effective date.—The provision is effective upon the date of enactment, and applies to all taxable years before 1980.

2. Deduction for dividends paid on employer securities held in an ESOP

PRESENT LAW

Under present and prior law, certain dividends paid with respect to employer securities held in an employee stock ownership plan (ESOP) are deductible by the corporation paying the dividends. Under the Omnibus Budget Reconciliation Act of 1989, in the case of dividends used to repay a loan used to acquire employer securities, the deduction is not available unless the dividends are paid with respect to securities acquired with that loan. The 1989 Act provision generally applies to dividends on securities acquired after August 4, 1989.

House Bill

No provision. (However, H.R. 5641 as passed by the House contains a provision that is the same as the conference agreement.)

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, the 1989 Act provision does not apply to employer securities acquired with assets transferred from a defined benefit plan in a transaction described in section 4890(c)(3). The provision is limited to securities acquired before October 1, 1989, and with respect to plan terminations which were the subject of a determination letter in effect on August 4, 1989, and at all times thereafter before the securities were acquired.

Effective date.—The provision is effective on the date of enactment.

3. Exemption for certain death and disability payments to public safety employees

Present Law

Under present law, amounts received under a workmen's compensation act as compensation for personal injuries or sickness incurred in the course of employment are excluded from gross income. Compensation received under a workmen's compensation act by the survivors of a deceased employee also are excluded from gross income. Non-occupational death and disability benefits are not excludable from income as workmen's compensation benefits.

House Bill

No provision. (However, H.R. 5651 contains a provision that is the same as the conference agreement.)

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, amounts that were paid in 1989, 1990, and 1991 on behalf of police and firefighters who became disabled or died because of hypertension or heart disease are treated as compensation for work-related personal injuries or sickness for purposes of the exclusion from gross income for workmen's compensation benefits.

Effective date.—The provision is effective on the date of enactment.

4. Treatment of fringe benefits of airline affiliate employees

PRESENT LAW

Under present law, the gross income of an employee of an airline or a qualified affiliate of an airline does not include the value of air transportation provided as a no-additional-cost service under section 132.

In general, a qualified affiliate is a corporation at least 80 percent of which is owned by an airline and that is engaged in an airline related service (e.g., ticketing and reservations, baggage handling).

HOUSE BILL

No provision.

SENATE AMENDMENT

The definition of qualified affiliate is amended to include any entity that is at least 80 percent owned (directly or otherwise) by one or more companies that operate an airline. As under present law, to be qualified the affiliate must be predominantly engaged in airline-related services.

Effective date.—The provision is effective for years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

E. TAX-EXEMPT BOND PROVISION

1. Texas Veterans' Land Bond Program

PRESENT LAW

The Tax Reform Act of 1986 ("the 1986 Act") provided that bonds issued to finance the Texas Veterans' Land Bond Program as it was operated on March 15, 1984 could be issued as tax-exempt private activity bonds. One of the State-law restrictions on the program in 1984 was that the maximum loan amount could not exceed $20,000 per recipient. Along with most other private activity bonds, issuance of these bonds is subject to an annual state volume limitation. Subsequent to the enactment of the 1986 Act the Texas legislature amended the program to increase the maximum loan amount from $20,000 to $40,000.

HOUSE BILL

There is no provision in H.R. 11, however, H.R. 5637 conforms the maximum allowable loan amount under Federal tax rules to the State-law maximum of $40,000.

Effective date.—The provision applies to bonds issued after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provisions of H.R. 5637.

2. St. Paul Port Authority bonds

PRESENT LAW

Aggregation rules

In certain cases, the Treasury Department treats multiple issues of tax-exempt bonds that are to be paid from substantially the same source of funds and are issued pursuant to a common plan of financing as a single issue in applying the Code's tax-exempt bond restrictions if the bonds are issued within a relatively short period of time. Simultaneous issuance can therefor result in loss of tax-exemption in the case of qualified small-issue bonds with a common principal user because the aggregation could violate the present-law rule that limits to $10 million the maximum amount of certain capital expenditures within a six year period by a principal user of the bonds. Present law also precludes the combination into a single bond issue of certain bonds with multiple Code authorizations (e.g., the exempt facility, qualified 501(c)(3), and small-issue bonds).

Arbitrage rules

Subject to certain exceptions a State or local bond is taxable as an arbitrage bond if more than a minor portion of proceeds of the issue of which it is a part is reasonably expected to be used directly or indirectly to acquire higher-yielding investments or, replace funds which were used directly or indirectly to acquire higher yielding investments. Thus, the issuer cannot charge the ultimate borrowers who use private activity bond proceeds more than a set amount, generally one-eighth of one percent over the yield on issue plus certain costs (the "purpose arbitrage restrictions").

HOUSE BILL

No provision in H.R. 11, (However, H.R. 5659 contains a provision relating to St. Paul Port Authority bonds.). Under that provision, notwithstanding the rules on simultaneous issuances of bonds described above, the St. Paul Port Authority, created by enabling legislation enacted on August 17, 1932, is allowed simultaneously to reduce the interest rate on 876 bond issues (technically a "refunding") without loss of tax-exemption. The 876 bond issues were issued beginning on September 4, 1980, and ending on May 29, 1991 and were issued pursuant to a common bond security fund program that was created pursuant to Basic Resolution No. 876 adopted on February 14, 1974.

In addition, an exception from the Code's purpose arbitrage restrictions is created (i.e., the bonds will not be treated as arbitrage bonds) if the Port Authority fails to reduce correspondingly the interest rate charged to ultimate obligors of the refunded bonds. The

committee understands that excess arbitrage earnings will be used to offset losses attributable to certain of the refunded bond issues that are in default.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision of H.R. 5659.

3. Modification of restriction on rules governing investment in certain tax-exempt bonds by financial institutions

PRESENT LAW

Banks and other financial institutions generally are denied a deduction for the portion of their interest expense (e.g., interest paid to depositors) that is attributable to investments in tax-exempt bonds acquired after August 7, 1986. This disallowance is computed using a pro rata formula that compares the institution's average adjusted basis in tax-exempt bonds acquired after that date with the average adjusted basis of all assets of the institution.

The Tax Reform Act of 1986 included transitional exceptions to this provision for certain bond issues (i.e., sec. 902 of the Act), which were subsequently modified in 1988 by technical corrections to that act.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that bonds issued before introduction of the 1988 technical corrections which were originally sold as qualifying for the transitional exception will qualify notwithstanding the 1988 technical correction, if the issuers elect.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with a technical clarification that the provision applies to bonds issued in reliance on section 902(f)(3)(L) of the Tax Reform Act.

F. OTHER INCOME TAX PROVISIONS

1. Increase maximum number of shareholders of an S corporation

PRESENT LAW

A small business corporation may elect to be treated as an S corporation. Income and losses of an S corporation are generally passed through to its shareholders and taxed at the shareholder level rather than at the corporate level. A small business corporation may not have more than 35 shareholders. For this purpose, a husband and wife (and their estates) are counted as one shareholder.

HOUSE BILL

No provision in H.R. 11. (However, section 102(a) of H.R. 2735 as passed the House provides that the maximum number of shareholders permitted for a corporation to qualify for, and maintain, S corporation status is increased from 35 to 50.)

Effective date.—The provision in H.R. 2735 is effective on the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement contains the provision in H.R. 2735, increasing the maximum number of shareholders to 50.

2. S corporations eligible for rules applicable to real property subdivided for sale by noncorporate taxpayers

PRESENT LAW

Under present law, any lot or parcel which is part of a tract of real property held by a noncorporate taxpayer is not deemed to be held primarily for sale to customers in the ordinary course of a trade or business solely because of the taxpayer having subdivided the tract for purposes of sale, provided certain requirements are met (sec. 1237). Individuals and partnerships are eligible for capital gain treatment under these rules, but S corporations are not.

Only noncorporate taxpayers may be shareholders of an S corporation. An S corporation computes its taxable income generally in the same manner as an individual (sec. 1363(b)).

HOUSE BILL

No provision in H.R. 11. (However, section 102(b) of H.R. 2735 as passed by the House provides that S corporations are eligible for capital gain treatment under the rules of section 1237 when subdividing real property for sale.)

Effective date.—Sales after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision of H.R. 2735.

3. Treatment of livestock sold on account of weather-related conditions

PRESENT LAW

A cash method taxpayer whose principal trade or business is farming and who is forced to sell livestock due to drought conditions may elect to include income from the sale of the livestock in the taxable year following the taxable year of the sale. This elec-

tive deferral of income is available only if the taxpayer establishes that the sale would not have occurred but for drought conditions which resulted in the area being designated as eligible for Federal assistance.

In addition, the sale of livestock (other than poultry) that are held for draft, breeding, or dairy purposes in excess of the number of livestock that would have been sold but for drought conditions is treated as an involuntary conversion. Consequently, gain from the sale of such livestock may be deferred by reinvesting the proceeds of the sale in similar property within a two-year period.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 2735 provides that the special rules applicable to livestock sold on account of drought conditions are to apply in the case of any other weather-related condition, such as hurricane, tornado, or flooding.)

Effective date.—The provision applies to sales and exchanges occurring after December 31, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision of H.R. 2735.

4. Depreciation of tuxedos held for rental

PRESENT LAW

Tuxedos held for rental are assigned a class life of 9 years under the accelerated cost recovery system as modified by the Tax Reform Act of 1986. Consequently, the depreciation deductions for rental tuxedos generally are determined by using a 5-year recovery period, the applicable convention, and the 200-percent declining balance method switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

HOUSE BILL

No provision in H.R. 11. However, H.R. 2735 provides that tuxedos held for rental are assigned a class life of 2 years. Consequently, the depreciation deductions for rental tuxedos are to be determined by using a 3-year recovery period, the applicable convention, and the 200-percent declining balance method switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized. Alternatively, a taxpayer may elect under the alternative depreciation system to determine the depreciation deductions for rental tuxedos by using a 2-year recovery period, the applicable convention, and the straight-line method.

Effective date.—The provision applies to rental tuxedos placed in service after December 31, 1992.

SENATE AMENDMENT

No provision.

Conference Agreement

The conference agreement follows the provision of H.R. 2735.

5. *Treatment of certain compensation payable by certain personal service corporations using an accrual method of accounting*

Present Law

Under the Tax Reform Act of 1986 (the "1986 Act"), a personal service corporation that uses an accrual method of accounting generally is not allowed a deduction for an amount payable to an employee-owner of the corporation prior to the time that the amount is includible in the gross income of the employee-owner. For this purpose, a personal service corporation is any corporation the principal activity of which is the performance of personal services if the services are substantially performed by employee-owners and more than 10 percent of the value of the outstanding stock of the corporation is owned by employee-owners. An employee-owner is any employee of the corporation who owns any of the outstanding stock of the corporation (generally determined by applying the attribution rules of sec. 318).

House Bill

No provision in H.R. 11. (However, H.R. 2735 as passed by the House, contains a provision identical to the conference agreement below.)

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, a designated personal service corporation is allowed a deduction for qualified compensation payable to an employee-owner of the corporation (other than a key employee as defined by sec. 416(i) of the Code) at the time that the compensation would otherwise have been deductible in the absence of the 1986 Act provision that postpones the deduction until the time that the compensation is includible in the gross income of the employee-owner.

A "designated personal service corporation" means any personal service corporation (within the meaning of sec. 441(i)(2)) using an accrual method of accounting for its last taxable year ending prior to the date of enactment of this provision. "Qualified compensation" means compensation payable to an employee for the payroll period ending at the close of the corporation's taxable year if: (1) such payroll period is semi-monthly or shorter; (2) such employee is regularly paid on the basis of semi-monthly or shorter payroll periods; and (3) such compensation is solely for hours of service performed or is such payroll period's ratable share of the employee's annual basic rate of compensation. Thus, qualified compensation does not include vacation pay or bonuses.

Effective date.—The provision is effective for amounts incurred in taxable years beginning after December 31, 1992.

6. Allow certain investment expenses to be deducted for AMT purposes

PRESENT LAW

Individuals are subject to an alternative minimum tax imposed at a 24-percent rate on the taxpayer's alternative minimum taxable income. In computing alternative minimum taxable income, no deduction is allowed for miscellaneous itemized deductions. Investment expenses deductible under section 212 are generally treated as a miscellaneous itemized deduction and thus are not deductible in computing the minimum tax. Under the regular tax, miscellaneous itemized deductions (including investment expenses) are deductible only to the extent they exceed two percent of the individual's adjusted gross income.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 2735, as passed by the House, contains a provision identical to the provision of the Senate amendment.)

SENATE AMENDMENT

The Senate amendment provides that a certain amount of the distributive share of section 212 expenses of a partner in a partnership is deductible by an individual for AMT purposes. The aggregate amount deductible for AMT purposes is limited to the lesser of (1) the aggregate of the individual's adjusted investment income from partnerships or (2) the excess of the aggregate of the taxpayer's distributive shares of section 212 expenses over two percent of the taxpayer's adjusted gross income. For purposes of the provision, "adjusted investment income" means investment income (as defined by sec. 163(d)(4)(B) so as not to be reduced by sec. 212 expenses) reduced by investment interest (as defined by section 163(d)(3) so as not to be reduced by the limitation applicable to investment interest).

For example, assume that for 1993, the only items of taxable income of an individual are from an interest in a partnership. For the year, the partnership reports $30,000 of investment income, $10,000 of section 212 expenses, and $25,000 of investment interest to the individual. Under the bill, the individual would be allowed to deduct $5,000 of section 212 expenses for AMT purposes ($30,000 investment income less $25,000 investment interest).

As a further example, assume that for 1993, the individual described in the example above also receives a salary of $270,000. Under the bill, the individual would be allowed to deduct $4,000 of section 212 expenses for AMT purposes ($10,000 less 2 percent of adjusted gross income of $300,000 ($6,000)).

Effective date.—The provision is effective for taxable years beginning after 1992.

CONFERENCE AGREEMENT

The conference agreement follows the provision in H.R. 2735 and the Senate amendment.

7. Clarification of the eligibility of relocated buildings for the rehabilitation tax credit

PRESENT AND PRIOR LAW

An income tax credit is provided for certain expenditures incurred in the rehabilitation of certified historic structures and certain nonresidential buildings placed in service before 1936. The amount of the credit is determined by multiplying the applicable rehabilitation percentage by the basis of the property that is attributable to qualified rehabilitation expenditures. The applicable rehabilitation percentage is 20 percent for certified historic structures and 10 percent for qualified rehabilitated nonresidential buildings (other than certified historic structures) that were originally placed in service before 1936.

The requirement that the building be placed in service before 1936 in order to be eligible for the credit was added by the Tax Reform Act of 1986 (the 1986 Act). Prior to the 1986 Act, the rehabilitation tax credit was a three-tier credit. The credit was 15 percent for nonresidential buildings at least 30 years old, 20 percent for nonresidential buildings at least 40 years old, and 25 percent for certified historic structures. The three-tier structure was added by the Economic Recovery Tax Act of 1981.

Treasury regulations provide that certain relocated buildings are not eligible for the rehabilitation credit (Treas. Reg. sec. 1.48-12(b)(5)). This rule was contained in proposed regulations published on June 28, 1985, interpreting the statute as amended by the Economic Recovery Tax Act of 1981. These regulations were finalized on October 7, 1988. In *Nalle*, 99 TC No. 9 (Aug. 5, 1992), the Tax Court ruled that the regulations were valid and could be applied retroactively to the effective date of the Economic Recovery Tax Act of 1981.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 5637 as passed by the House, contains a provision identical to the provision described in the conference agreement below.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that the rule of Treasury Regulation section 1.48-12(b)(5) that certain relocated buildings are not eligible for the rehabilitation credit is to be applied prospectively from the date that the regulation was published as a proposed regulation, i.e., June 28, 1985. Thus, 30-year and 40-year buildings (within the meaning of section 48(g) as enacted in the Economic Recovery Tax Act of 1981) will not be treated as being ineligible for the credit by reason of being relocated if the rehabilitation of the building at the relocated site began before June 28, 1985.

8. Treatment of certain small property and casualty insurance companies under the alternative minimum tax

PRESENT LAW

Present law provides that certain small property and casualty insurance companies may elect to be taxed only on taxable investment income for regular tax purposes (sec. 831(b)). Eligible property and casualty insurance companies are those whose net written premiums (or if greater, direct written premiums) for the taxable year exceed $350,000 but do not exceed $1,200,000.

Under present law, all corporations including insurance companies are subject to an alternative minimum tax. For taxable years beginning before 1990, alternative minimum taxable income is increased by one-half of the amount by which the corporation's pretax book income exceeds the corporation's alternative minimum taxable income (determined without regard to this adjustment and without regard to net operating losses). For taxable years beginning after 1989, alternative minimum taxable income is increased by 75 percent of the excess of adjusted current earnings over alternative minimum taxable income (determined without regard to this adjustment and without regard to net operating losses).

HOUSE BILL

No provision in H.R. 11. However, H.R. 5642 provides that a small property and casualty insurance company that elects for regular tax purposes to be taxed only on taxable investment income determines its adjusted current earnings under the alternative minimum tax without regard to any amount not taken into account in determining its gross investment income under section 834(b). Thus, adjusted current earnings of an electing company is determined without regard to underwriting income (or underwriting expense, as provided in sec. 56(g)(4)(B)(i)(II)).

H.R. 5642 also provides that only net investment income as reported in the company's applicable financial statement is taken into account in determining adjusted net book income under the prior law provisions of the alternative minimum tax, in the case of a small property and casualty insurance company that elects for regular tax purposes to be taxed only on taxable investment income. Thus, adjusted net book income of an electing company is determined without regard to underwriting income and expense.

Effective date.—The adjusted current earnings provision is effective for taxable years beginning after December 31, 1989. The book income provision is effective for taxable years beginning after December 31, 1986 and before January 1, 1990.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the above provisions of H.R. 5642.

9. Treatment of associations that result from the merger of certain farm credit associations

PRESENT LAW

The Agricultural Credit Act of 1987 (Pub. L. No. 100-233) authorized the merger of certain production credit associations and certain Federal land bank associations. A production credit association is an association created under Federal law that generally provides short-term and intermediate-term loans to farmers, ranchers, and related businesses primarily to finance operating expenses, including the purchase of livestock, farm equipment and other similar items. A Federal land bank association is an association created under Federal law that generally provides long-term loans to farmers, ranchers, and farm-related businesses primarily to finance the purchase of land.

Under the Farm Credit Act of 1971, a Federal land bank association is exempt from Federal income tax. On the other hand, a production credit association is subject to Federal income tax.

HOUSE BILL

No provision. However, H.R. 5642 provides that any association that results from a merger under section 7.8 of the Farm Credit Act of 1971 or section 411 of the Agricultural Credit Act of 1987 of one or more Federal land bank associations and one or more production credit associations (a "merged association") generally is treated for Federal income tax purposes in the same manner as a production credit association. Consequently, the income of a merged association generally is subject to Federal income tax.

In determining the Federal income tax liability of a merged association (or any successor to such merged association), however, there is not to be taken into account any item of income, gain, loss, or deduction that is properly allocable to loans that are authorized to be made by Federal land bank associations and that have an initial term of at least 10 years.

Effective date.—The provision applies to taxable years ending after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision of H.R. 5642, with the modification that a merged association for purposes of the provision is also to include any association that results from a merger under section 410(e) of the Agricultural Credit Act of 1987 of one or more Federal land bank associations and one or more production credit associations. In addition, the conference agreement provides that for purposes of the provision any reference to the Farm Credit Act of 1971 is to be construed as a reference to such Act as in effect on December 31, 1992.

10. Tax treatment of debt-for-debt exchanges

PRESENT LAW

Gross income generally includes cancellation of indebtedness income (COD). Taxpayers in title 11 cases and insolvent taxpayers, however, generally exclude COD from gross income but reduce tax attributes by the amount of COD created on the discharge of debt. The amount of COD excluded from income of an insolvent debtor not in a title 11 case cannot exceed the amount by which the debtor is insolvent. For all taxpayers, the amount of COD generally is the difference between the adjusted issue price of the debt being cancelled and the amount used to satisfy the debt.

For purposes of determining the amount of COD, if any, of a debtor that issues a new debt instrument in satisfaction of an old debt (or modifies an old debt instrument such that the modification is treated as an exchange), the debtor is treated as having satisfied the old debt with an amount of money equal to the issue price of the new debt. Thus, if the issue price of the new debt is less than the adjusted issue price of the old debt, COD generally is created. For this purpose, the issue price of the new debt is determined under the general rules applicable to debt instruments issued for property (i.e., secs. 1273 and 1274 of the Code relating to the original issue discount rules). Thus, if either the new or old obligation in a debt-for-debt exchange is publicly traded, the issue price of the new debt will be the fair market value of the publicly-traded obligation. If neither obligation is publicly-traded, the issue price of the new debt is its stated principal amount, unless the new obligation does not have adequate stated interest. In such case, the issue price generally is determined by using the applicable Federal rate to discount all payments due under the new obligation.

The rules that provided that the amount of COD created in a debt-for-debt exchange is to be determined pursuant to the rules applicable to debt instruments issued for property were added by a provision of the Omnibus Budget Reconciliation Act of 1990 (the 1990 Act). Prior to the 1990 Act, in a debt-for-debt exchange in a reorganization, the issue price of the new debt instrument was not less than the adjusted issue price of the old debt instrument. It was unclear whether and how this reorganization rule applied for purposes of determining COD.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 5655 as passed by the House contains a provision identical to that described in the conference agreement below.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

Under the conference agreement, if (1) any debt instrument (the new debt instrument) is issued pursuant to a plan of reorganization for another debt instrument (the old debt instrument) and

(2) the amount which (but for this provision) would be the issue price of the new debt instrument is less than the adjusted issue price of the old debt instrument, then the issue price of the new debt instrument shall be treated as equal to the lesser of (1) the adjusted issue price of the old debt instrument or (2) the stated principal amount of the new debt instrument. This rule will apply for purposes of determining the amount (if any) of COD created with respect to the debt-for-debt exchange.

For this purpose, the term "debt instrument" includes an investment unit. In addition, the adjusted issue price of the old debt instrument is its issue price, increased by the portion of any original issue discount previously includible in the gross income of any holder (without regard to sections 1272(a)(7) or (b)(4) or corresponding provisions of prior law). For purposes of section 163(e), the adjusted issue price of the old debt instrument is its issue price, increased by any original issue discount previously allowed as a deduction.

Example 1.—A corporation issued for $1,000 a bond that provided for annual coupon payments based on a market rate of interest. The bond is publicly traded. Some time later, when the old bond is worth $600, the corporation exchanges the old bond for a new bond that has a stated principal amount of $750. The exchange qualifies as a reorganization. Under the provision, the new bond will have an issue price of $750 (its stated principal amount) and the corporation will have COD of $250 ($1000 adjusted issue price of the old bond less $750 issue price of the new bond).

Example 2.—Assume that the debt-for-debt exchange described in Example 1 was restructured so as to not qualify as a reorganization and that the stated redemption price at maturity of the new bond was $750. In that case, the new bond will have an issue price of $600 (its fair market value) and original issue discount of $150 ($750 stated redemption price at maturity less $600 issue price). The corporation will have COD of $400 ($1000 adjusted issue price of the old bond less $600 issue price of the new bond).

Effective date.—The provision applies to debt instruments issued after the date of enactment, in satisfaction of any indebtedness.

11. Treatment of deposits under certain perpetual insurance policies

Present Law

Present law provides that in the case of a mutual fire insurance company exclusively issuing perpetual policies, the amount of single deposit premiums paid to such company are not included in gross income (sec. 832(b)(1)(C)). In addition, no deduction is allowed for policyholder dividends and similar distributions paid or declared by a mutual fire insurance company that exclusively issues perpetual policies (sec. 832(c)(11)).

Present law also provides rules for imputing interest income in the case of certain loans with below-market interest rates (sec. 7872). The Internal Revenue Service issued a technical advice memorandum in March of 1988 (TAM 8831004) which provides that the imputed interest provisions of section 7872 of the Code do not apply to payments made under a perpetual insurance policy. This

technical advice memorandum was revoked by the Internal Revenue Service in December of 1989 (TAM 8952001).

HOUSE BILL

No provision in H.R. 11. However, H.R. 5657 provides that the provisions of present law which treat certain arrangements as below-market rate loans are not to apply to any deposit made by a policyholder under a qualified perpetual policy.[1] For this purpose, a qualified perpetual policy is any insurance policy that (1) provides insurance for property damage or casualty with respect to qualified residential property (or the contents thereof); and (2) is funded only by the policyholder placing with the insurance company a cash deposit (and does not provide for any periodic premiums) and such deposit is fully refundable (except for a penalty for early cancellation) upon cancellation of the policy. For this purpose, qualified residential property means any personal residence and any building used for residential purposes with 10 or fewer dwelling units. Damage or casualty with respect to the contents of qualified residential property is intended to mean such damage or casualty wherever it occurs (whether or not in the residential property), if such coverage is customarily provided under perpetual policies with respect to such property.

Effective date.—The provision applies to taxable years ending after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision of H.R. 5657.

12. Deduction for small property and casualty insurance companies

PRESENT LAW

Treatment of small life insurance companies

A life insurance company with assets as of the end of any taxable year of less than $500 million (determined on a controlled group basis) is allowed a special deduction in determining taxable income for such year. The deduction equals 60 percent of the first $3 million of tentative taxable income, reduced by 15 percent of the tentative taxable income in excess of $3 million (the deduction is completely phased out when tentative taxable income equals $15 million). Tentative taxable income is defined as the taxable income of the company determined without regard to the small life insurance company deduction and any items attributable to noninsurance businesses.

[1] The amount deposited under a perpetual insurance contract, however, is to be treated as a written premium for purposes of the small company provisions contained in sections 501(c)(15) and 831(b) of the Code.

Treatment of small property and casualty insurance companies

An insurance company other than a life insurance company (a "property and casualty insurance company") is exempt from Federal income tax for any taxable year that the net written premiums (or, if greater, the direct written premiums) of the company do not exceed $350,000. In addition, a property and casualty insurance company may elect to be taxed solely on taxable investment income for any taxable year that the net written premiums (or, if greater, the direct written premiums) of the company exceed $350,000 but do not exceed $1.2 million. For this purpose, the net written premiums or direct written premiums of a property and casualty insurance company that is a member of a controlled group of corporations include the net written premiums or direct written premiums of each insurance company that is a member of the controlled group.

HOUSE BILL

No provision in H.R. 11. However, H.R. 5674 provides that a property and casualty insurance company witn assets as of the end of any taxable year of less than $500 million (determined on a controlled group basis) is allowed a special deduction in determining taxable income for such year. The deduction equals the applicable deduction percentage of the first $3 million of tentative taxable income, reduced by the applicable phase-out percentage of the tentative taxable income in excess of $3 million (the deduction is completely phased out when tentative taxable income equals $15 million).

The applicable deduction percentage equals: (1) 0 percent for taxable years beginning in 1992 and 1993; (2) 3 percent for taxable years beginning in 1994; (3) 7 percent for taxable years beginning in 1995; (4) 9 percent for taxable years beginning in 1996; and (5) 15 percent for taxable years beginning after 1996.

The applicable phase-out percentage equals: (1) 0 percent for taxable years beginning in 1992 and 1993; (2) 0.75 percent for taxable years beginning in 1994; (3) 1.75 percent for taxable years beginning in 1995; (4) 2.25 percent for taxable years beginning in 1996; and (5) 3.75 percent for taxable years beginning after 1996.

Tentative taxable income is defined as the taxable income of the company determined without regard to the special deduction and any items attributable to noninsurance businesses.

Effective date.—The provision applies to taxable years beginning after December 31, 1991.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provision of H.R. 5674.

13. Certain distributions by Alaska Native Corporations

PRESENT LAW

Shareholders are generally taxed on dividends received from a corporation during the taxable year. In general, a corporate distribution to shareholders is treated as a dividend to the extent of the corporation's current or accumulated earnings and profits. A shareholder includes in gross income the amount of a dividend received and the corporation's earnings and profits are reduced by the amount of such distribution.

Distributions that are not out of a corporation's earnings and profits reduce a shareholder's basis in the distributing corporation's stock but are not included in gross income of the shareholder, to the extent of such basis. Distributions in excess of earnings and profits and of basis are generally treated by a shareholder as capital gain.

HOUSE BILL

No provision in H.R. 11. However, H.R. 5658 as passed by the House treats an amount of distributions by an Alaska Native Corporation (ANC) to its Native shareholders or their descendants (as defined in section 3 of ANSCA) as distributions that are not out of earnings and profits, in cases where such distributions would otherwise be treated as dividends. It is the intention of the committee that the amount of distributions granted this treatment be limited to an amount equal to the lesser of (1) the amount of cash received by the ANC (or its wholly owned subsidiary) on or before July 9, 1992 from the sale by the ANC (or by such subsidiary) of any natural deposits or timber received by the ANC pursuant to ANCSA,[1] or (2) the aggregate bases (as determined pursuant to section 21(c) of ANSCA) of such natural deposits or timber sold for cash received on or before July 9, 1992; in each case adjusted as described below.

For purposes of these computations, basis and cash attributable to natural deposits or timber that were sold in a "special purpose sale" are excluded. Such a sale is one in which a loss was recognized and which was made under an agreement entered into either (1) after October 22, 1986 and on or before April 26, 1988, or (2) after April 26, 1988, if the loss incurred thereon was used in a contract referred to in section 5021(b) of the Technical and Miscellaneous Revenue Act of 1988. Also, any amount realized directly or indirectly for the use of losses or credits of the ANC (or a corporation all of whose stock is owned directly by such corporation) is excluded where such use would not have been allowable but for section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section

[1] It is intended that cash received by the ANC or its wholly owned subsidiary from a sale of natural deposits or timber is within the scope of the provision only if such cash is received by the ANC or subsidiary on or before July 9, 1992 without any limitation or restriction. Amounts in escrow, for example, are not considered cash received on or before July 9, 1992 within the meaning of the provision.

It is not intended that amounts received by an ANC or its wholly owned subsidiary will be treated as cash received on or before July 9, 1992 if such amounts are directly or indirectly attributable to a sale by any entity in which the ANC or such subsidiary owns a proportionate interest but which is not a wholly owned subsidiary of a single ANC.

It is not intended that sales of any land or property, other than natural deposits or timber received by the ANC pursuant to ANSCA, be within the scope of the provision.

1804(e)(4) of the Tax Reform Act of 1986 and repealed by section 5021 of the Technical and Miscellaneous Revenue Act of 1988).

The distribution of any amount that is treated under this provision as not out of earnings and profits shall reduce the basis of the shareholder's stock by such amount.

Effective date.—The provision applies to any distributions after the date of enactment of ANSCA. However, the provision does not include any special rules that would reopen any closed tax year or extend the statute of limitations for any taxpayer to permit claims for credit or refund. Nevertheless, all distributions made by an ANC after the date of enactment of ANCSA (whether in a closed year or an open year and however reported for tax purposes) and which, but for this provision, would have been taxable as dividends for Federal income tax purposes, are counted toward the maximum amount of distributions treated under this provision as not out of earnings and profits.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the provisions of H.R. 5658 with certain technical corrections and clarifications.

14. Alaska Native Corporations standing with respect to sale of losses

PRESENT LAW

Alaska Native Corporations established under the Alaska Native Claims Settlement Act (43 U.S.C. secs. 1601 et seq) and their consolidated return groups (Native Corporations) were permitted, from 1984 to 1988, to file consolidated returns with other corporations under rules more liberal than those generally applicable to other taxpayers. In particular, the provisions of the Tax Reform Act of 1984, which narrowed the definition of affiliated group, were explicitly made inapplicable to Native Corporations. In addition, the Tax Reform Act of 1986 clarified that no provision or principle of law may be applied to deny the benefit or use of losses or credits of a Native Corporation by its consolidated group. These provisions were repealed by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).

While these provisions were in effect, they permitted Native Corporations to sell their net operating losses and other tax benefits (NOLs) to unrelated corporations and their consolidated return groups ("Buyers"). Typically, the Buyer assigned (or otherwise made available) income of the Buyer to a "profit subsidiary" that was a member of the Native Corporation's consolidated return group under the applicable liberal affiliation rules. In some cases, a profitable operating corporation might itself become the "profit subsidiary" member of the Native Corporation group in order to utilize the Native Corporation's NOLs. The Buyer would compensate the Native Corporation for the use of such NOLs under the terms of a consolidated return tax sharing agreement and in ac-

cordance with the parties' agreements regarding payments for such losses.

The Internal Revenue Service (IRS) is now examining these loss sale transactions and has in some cases contested the amount of NOLs claimed as offsetting income of the profit subsidiary in the Native Corporation's return. The IRS has taken the position that any income assigned or otherwise transferred in excess of the amount of allowable NOLs sold "springs back" to the Buyer rather than being excess income of the Native Corporation. As a result, when the IRS asserts that the NOLs of a Native Corporation are not sufficient to offset the income of a profit subsidiary, the Native Corporation would not have any regular income tax liability and therefore may lack standing to litigate the validity of its NOLs.

Under provisions adopted in TAMRA, Native Corporations have certain specified procedural rights if the IRS proposes an adjustment to the tax liability of a Buyer based on the disallowance of Native Corporation NOLs. Thus, the IRS must notify a Native Corporation of the proposed adjustment to the tax liability of the Buyer. The Native Corporation also has certain specified rights to participate in administrative proceedings, and to file an amicus brief in any proceeding in a Federal court or in the United States Tax Court.

House Bill

No provision.

Senate Amendment

The Senate amendment permits an election that would provide Native Corporations standing to litigate the validity of their NOLs under certain circumstances. The provision is procedural in nature and is not intended to change the amount of tax, addition to tax, interest (except for the additional interest generated by the election process), penalty or similar amount that may otherwise be due with respect to excess income with respect to an NOL sale, including, but not limited to, any alternative minimum tax.

As a condition of the election, the underpayment rate under section 6621 for tax determined under the elective procedure is increased by one half of one percentage point.

Conference Agreement

The conference agreement follows the Senate bill with several technical clarifications. The conference agreement provides as follows:

In general

The Senate amendment permits an irrevocable election that would provide Native Corporations standing to litigate the validity of their NOLs under certain circumstances. The provision is procedural in nature and is not intended to change the amount of tax, addition to tax, interest (except for the additional interest generated by the election process), penalty or similar amount that may otherwise be due with respect to excess income with respect to an

NOL sale, including, but not limited to, any alternative minimum tax.

As a condition of the election, the underpayment rates under section 6621(a)(2)(B) and under 6621(c) for tax determined under the elective procedure are increased by one half of one percentage point.

Election

A Native Corporation and one or more of its Buyers may irrevocably elect to have the income of the profit subsidiary included on the consolidated tax return of the Native Corporation solely for purposes of the issuance of a statutory notice of deficiency. The election must be made jointly by the Native Corporation and each electing Buyer. Thus, the Native Corporation must obtain the written consent of a Buyer with respect to a particular NOL sale in order to receive standing with respect to such sale.

The election must be made within 120 days after the date of enactment of the provision. The election must be filed jointly by the Native Corporation and by the Buyer with the Anchorage IRS district director and must: (1) identify the parties with particularity; (2) state the amount of income assigned under the original agreement of the Native Corporation and the Buyer (i.e. the amount that is subject to the election); (3) if the Native Corporation dealt with multiple Buyers or profit subsidiaries in the taxable year, describe the order in which such Native Corporation transactions occurred (it is intended that the IRS, the Native Corporation, and each Buyer will respect the original agreements of the Native Corporation and Buyers, entered into at the time of the loss sale transactions, regarding the ordering of a Native Corporation's losses among several Buyer corporations in a single year); and (4) state the agreement of the Buyer to extend its statute of limitations for assessment (solely with respect to any tax attributable to the subject NOL sale) for at least 180 days after the date the decision in the Native Corporation proceeding becomes final. The Native Corporation must also agree to extend its statute of limitations for assessment, (solely with respect to any deficiency under the election attributable to the subject NOL sale), to at least 120 days after date the election is made. In addition, the Native Corporation and the electing Buyer agree that the IRS is authorized to make any refund of any overpayment of tax that is determined to be due jointly to the Native Corporation and the electing Buyer.

The election is available separately for each Buyer from each Native Corporation. Any Buyer that so elects must, however, elect for all Native Corporation transactions with the particular Native Corporation for all open taxable years. A Buyer is entitled to make an election under this provision, regardless of whether it is a member of a consolidated group.

General effect of the election

If the election is made, the Native Corporation is considered the taxpayer solely for purposes of issuing a deficiency notice or filing a claim for refund, and thus has standing to pursue the matter in Tax Court or to file a claim for refund and pursue that claim.

Thus, solely for this purpose, income assigned, transferred, or otherwise made available by the Buyer through the use of a profit subsidiary (including by an operating company itself becoming a profit subsidiary) shall be included in the taxable income of the Native Corporation.

It is intended that all Federal income tax issues concerning the amount and validity of tax benefits of a Native Corporation that were sold to an electing Buyer under a transaction permitted by the special provisions in effect from 1984 to 1988 will be resolved by the Native Corporation and the IRS under procedural rules applicable to taxpayers generally.

For example, the IRS will issue a deficiency notice to the Native Corporation, thereby giving the Native Corporation standing to resolve the issues by settlement or litigation and the ability to pay any deficiency and file a claim for refund and litigate in its name in the appropriate judicial forum. All IRS notices regarding Native Corporation transactions for which an election has been made will be issued only to the Native Corporation, which will provide copies of such notices to all Buyers involved.

The common parent of the consolidated group of an electing Native Corporation will similarly be treated under the consolidated return regulations as the sole agent of the profit subsidiary. However, for purposes of collection, the Buyer and the profit subsidiary are responsible for payment of any tax.

Nothing in the provision compels the IRS to litigate with respect to the NOLs sold to an electing Buyer. The provision merely allows electing corporations to proceed in the name of the Native Corporation if there is a tax controversy with respect to the taxability of the income assigned by the electing Buyers.

Tax liability

Any tax with respect to an NOL sale will be determined at the rate applicable to the Buyer for the taxable year of the Buyer for which the NOL sale occurred (as if the income assigned from the NOL sale had been reported by the Buyer), and the Buyer and profit subsidiary shall be responsible for the payment of such tax, together with any interest, addition to tax, penalty, or other amount attributable to the income of the profit subsidiary.

Solely for purposes of issuing a deficiency notice to a Native Corporation in a case where an election has been made, the tax may be computed by applying the maximum corporate rate under section 11 of the Code.

Any payment made to the IRS by a Native Corporation on behalf of a Buyer shall be deemed to be a payment of tax by the Buyer for the taxable year in question. However, the Native Corporation shall be treated as the taxpayer of such amounts (and of any amounts paid by the Buyer) for purposes of filing a claim for refund and a refund suit.

A refund of any overpayment that may be made with respect to a Native Corporation transaction for which an election has been made may be made jointly to the Native Corporation and the electing Buyer. The IRS shall have no further payment obligation for such overpayment. In addition, any failure by the IRS to make such refund jointly shall not result in any further obligation of the

IRS, except for any administrative interest that may accrue due to delay of a replacement check. Nothing in this provision shall prohibit the IRS from using its authority under section 6402 of the Code to offset against other liabilities of the Native Corporation or the electing Buyer the amount of any overpayment that arises as a result of this provision.

Procedural rights

A Buyer that elects under the provision shall have participatory rights in any administrative consideration of the tax consequences of an NOL sale (including the right to submit a written statement to the IRS regarding the proposed adjustment and to meet with the IRS at the same time as the Native Corporation), and the right to file an amicus brief in any judicial proceeding commenced by the Native Corporation with respect to such tax consequences. Any meetings with the IRS will be subject to the reasonable discretion of the IRS as to time, place, and manner and will be subject to the general standards of the IRS that are applicable to the time and place for interviewing a taxpayer. The foregoing administrative right will not apply if the IRS determines that an extension of the statute of limitations is necessary to permit the exercise of such rights and the Buyer and the Native Corporation do not agree to such extension. The same procedural rights are preserved for a Native Corporation for those NOL sales for which no election is filed. Any failure by the IRS to grant the rights discussed above will not affect the validity of the determination by the IRS of any adjustment of tax liability.

Effect of determinations

Any final determination related to the Native Corporation's NOL sales, whether by administrative settlement or final judicial decision, including any amount of tax, addition to tax, interest, penalty, or similar amount, will be binding upon the Native Corporation, the Buyer, and the IRS. However, such determination shall not be binding on the IRS with respect to any non-electing Buyer.

The IRS may continue to deal with a non-electing Buyer as it would with any other taxpayer, including administrative settlement or litigation of any contested amounts.

Underpayment rate

For any underpayment resulting from a case in which an election has been made under this provision, the interest rate applicable pursuant to section 6621 of the Code shall be increased by one half of one percentage point. Thus, the rate under section 6621(a)(2)(B) shall be the Federal Short-term rate plus 3.5 percentage points; and the rate under section 6621(c) shall be the Federal Short-term rate plus 5.5 percentage points.

The application of the additional interest rate under this provision by reason of an election will not operate to suspend in any way the application of the special interest rate under section 6621(c).

The tax deficiency amount to which the additional interest under the election is applicable shall be the excess of the amount of the final tax deficiency for the taxable year of an electing Buyer

(including any taxable income attributable to the Native Corporation transaction, as determined by a final administrative or judicial determination) over the amount of the tax deficiency computed for the same taxable period which excludes the taxable income attributable the Native Corporation transaction.

Effective date

The provision is effective for Native Corporations whose statute of limitations for the period of assessment related to sales under section 1804(e)(4) of the Tax Reform Act of 1986 has not expired. Those Native Corporations for which the statute of limitations expires within 120 days after the enactment of the provision will be given the right to extend such statute by agreement with the IRS to a date not less than 120 days after the date of enactment of the provision, in order to permit the making of an election. The election is effective for all years of an electing Buyer for which the statute of limitations for assessment with respect to the Native Corporation transaction has not closed.

15. Treatment of certain residual-market insurance companies under the alternative minimum tax

PRESENT LAW

Many States have established not-for profit associations (commonly called residual-market insurance associations) to provide automotive or other types of property or casualty insurance to persons who otherwise could not obtain or afford such insurance. A residual-market insurance association that is subject to Federal income tax may be subject to the alternative minimum tax. The alternative minimum tax net operating loss deduction may offset only 90 percent of alternative minimum taxable income (determined without regard to the alternative tax net operating loss deduction).

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, any insurance company that is created by a State or an instrumentality thereof and that is operated on a not-for-profit basis for the primary purpose of providing coverage to persons for high-risk needs where coverage is not otherwise available or affordable may use its alternative tax net operating loss deduction to offset 100 percent (rather than 90 percent) of alternative minimum taxable income.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

16. Treatment of certain gains and losses of farmer cooperatives

PRESENT LAW

In general

A cooperative association is a corporation operating on a cooperative basis and allocating amounts to patrons on the basis of the business done with or for such patrons (sec. 1381). Unlike other corporations, a cooperative association is allowed to exclude from its taxable income any patronage dividends paid to its members or patrons or amounts paid in redemption of a nonqualified written notice of allocation (sec. 1382). Additionally, cooperative associations may reduce their gross income by the amount of qualified per-unit retain certificates and the amounts paid for redemptions of nonqualified per-unit retain certificates. A per-unit retain certificate is, in general, a written notice which sets forth the "per-unit retain allocation", i.e., the allocation by the cooperative association to a patron with respect to goods marketed by the cooperative association for the patron.

Treatment of patronage dividends by members and patrons

Members of a cooperative association who receive patronage dividends must treat the dividends as income, reduction of basis, or some other treatment that is appropriately related to the type of transaction that gave rise to the dividend. For example, where the cooperative association markets a product for one of its members, patronage dividends attributable to the marketing are treated like additional proceeds from the sale of the product and are includable in the recipient's income. Where the cooperative association purchases equipment for its members, patronage dividends attributable to equipment purchases are treated as a reduction in the recipient's basis in the purchased equipment (provided the recipient still owns the equipment).

Definition of patronage dividend

In general, a patronage dividend means an amount paid to a patron (1) on the basis of the quantity or value of business done with or for such patron, (2) under an obligation of the cooperative association to pay such amount, which obligation existed before the association received the amount so paid, and (3) which is determined by reference to the net earnings of the organization from business done with or for its patrons. "Such term does not include any amount paid to a patron to the extent that such amount is out of earnings other than from business done with or for patrons, or such amount is out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions." Sec. 1388(a)

Definition of income derived from sources other than patronage

The Treasury regulations provide that "* * *" income derived from sources other than patronage' means incidental income derived from sources not directly related to the marketing, purchasing, or service activities of the cooperative association. For exam-

ple, income derived from the lease of premises, from investment in securities, or from the sale or exchange of capital assets, constitutes income derived from sources other than patronage." Treas. Reg. sec. 1.1382-3(c)(2).

Notwithstanding the language of the Treasury regulations, both the Internal Revenue Service and the courts have held that other types of income may constitute income derived from patronage sources. See, for example, Rev. Rul. 69-576, 1969-2 C.B. 166 (patronage dividend from cooperative bank on loans used for patronage business considered patronage source income because it "* * * facilitates the accomplishment of the cooperative's marketing, purchasing, and service activities.* * *"); *Linnton Plywood v. United States*, 410 F. Supp. 1100 (D. Ore. 1976)(dividends received from a subsidiary corporation that made glue for the parent cooperative's plywood operation held to be patronage source income); *Astoria Plywood Corporation v. United States*, 79-1 U.S.T.C. par. 9197 (D. Ore. 1979) (payments for cancellation of a lease on a building used by cooperative for patronage-sourced activities were patronage source income); *Land O'Lakes, Inc. v. United States*, 675 F. 2d 988 (8th Cir. 1982) (dividends from stock in bank held to be patronage source income where the acquisition of the bank's stock was necessary to receive financing for patronage activities); *St. Louis Bank for Cooperatives v. United States*, 624 F. 2d 1041 (Ct. Cl. 1980) (interest earned on short-term investment of temporary excess cash of a cooperative bank held to be patronage source income).

The Internal Revenue Service has ruled that any gain treated as ordinary income under the depreciation recapture rules of section 1245 is treated as patronage source income in the same portion that the depreciation deductions were taken. Rev. Rul. 74-84, 1974-1 C.B. 244. The ruling further held that any additional gain which is treated as capital gain is not patronage-sourced income.

House Bill

No provision in H.R. 11. (However, section 1 of H.R. 5650 is substantially the same as the Senate amendment as described below, except that (1) H.R. 5650 applies to any cooperative association (to which part I of subchapter T applies), (2) an election under the House bill also would treat gains or losses on dispositions of "patronage assets" (as defined below) as ordinary income, (3) H.R. 5650 does not address the application of section 1231 to patronage gains and losses and nonpatronage gains and losses, and (4) H.R. 5650 is applicable to property dispositions occurring after the date of enactment.)

Senate Amendment

In general

Under the Senate amendment, a "farmer cooperative" may elect to include gain or loss on the sale or other disposition of certain assets in the determination of net earnings done with or for patrons. For this purpose, a "farmer cooperative" is any farmers', fruit growers', or like organization or association to which part I of subchapter T applies. This provision is not intended to imply that

present law is, or should be, changed with respect to non-electing farmer cooperatives or other organizations.

Assets to which provision applies

The Senate amendment applies to any asset (including stock or any other ownership or financial interest in another entity), or portion thereof, which is used by the cooperative to facilitate the conduct of business done with, or for, its patrons (herein referred to as a "patronage asset"). Where an asset was not used exclusively to facilitate the conduct of business done with, or for, the farmer cooperative's patrons, the Senate amendment applies only to the extent that the asset was used to facilitate the conduct of business with, or for, its patrons. The method of allocating the usage of the asset between patronage and non-patronage operations may be determined by any reasonable method. The Senate amendment also provides that section 1231 shall be applied separately to patronage gains and losses and nonpatronage gains and losses.

Rules applicable to election

An election made under this provision of the Senate amendment applies to all sales (or other dispositions) of patronage assets during the taxable year for which the election is made and all subsequent taxable years, until revoked by the farmer cooperative. Following a revocation of its election and absent the consent of the Treasury Department, a farmer cooperative shall not be eligible to re-elect patronage treatment until the third taxable year following the taxable year for which the revocation is effective. A revocation is effective upon the filing of notice with the Treasury Department.

Effective date

The provision is effective for sales or other dispositions of property occurring in taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. This legislation does not change present law regarding the ordinary or capital character of gain or loss from the sale of assets.

For a cooperative having an election in effect, any allocation of gain or loss from the sale of assets as part of its patronage dividends or per-unit retain allocations, or as part of a loss pass-through shall be subject to the general requirements of Subchapter T, including the requirement that, if patronage dividends are allocated, such allocation is made "on the basis of the quantity or value of business done with or for" patrons. However, any such income which is allocated to patrons must be allocated in a manner that does not distinguish among patrons based on the tax character of the income.

17. Elective deferral of income for crops grown in a qualified disaster area

PRESENT LAW

Gain derived from the sale or exchange of property generally is required to be included in gross income for the taxable year in which the sale or exchange occurs. A cash method taxpayer who receives insurance proceeds as a result of destruction of, or damage to, crops may elect to include the proceeds in income for the taxable year following the year in which the destruction or damage occurs if, under the taxpayer's practice, income from such crops would have been included for a year following the year in which the destruction or damage occurred.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment allows a taxpayer whose principal trade or business is farming and who has income derived from the sale or exchange of crops grown in a qualified disaster area to elect to include such income for the taxable year following the taxable year in which the sale or exchange occurs. A qualified disaster area is defined as an area designated by the President as warranting assistance by the Federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Andrew, Hurricane Iniki, or Typhoon Omar. The election applies only for the taxable year which includes the date that the President designates the area as warranting assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

If an election is made under this provision for any taxable year, then the applicable contribution base for purposes of section 1402(b) of the Code (relating to taxes imposed on self-employment income) for the taxable year for which the amount is included in income is to be increased by the lesser of: (1) the applicable contribution base for the taxable year of the sale or exchange, reduced by the self-employment income of the taxpayer for such taxable year; or (2) the amount included in gross income by reason of this provision for the taxable year for which the amount is included in income.

Effective date.—The provision applies to taxable years ending after December 31, 1991.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

18. Accounting for charges by real estate reporting persons for costs of complying with reporting requirements of Code section 6045

PRESENT LAW

It is unlawful for any real estate reporting person to charge separately any customer for complying with the information reporting requirements with respect to real estate transactions.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment clarifies that real estate reporting persons may take into account the cost of complying with the reporting requirements of Code sec. 6045 in establishing charges for their services, so long as a separately listed charge for such costs is not made.

Effective date.—The provision is effective for real estate transactions closing after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The conferees intend that no inference by drawn from this provision as to the proper treatment of these charges under present law.

19. Application of passive loss limitations to timber activities

PRESENT LAW

The passive loss rules limit deductions and credits from passive trade or business activities. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income, such as wages, portfolio income, or business income that is not derived from a passive activity. A similar rule applies with respect to credits from passive activities. Deductions and credits suspended under these rules are carried forward to the next taxable year, and are allowed in full when the taxpayer disposes of his entire interest in the passive activity to an unrelated person.

Passive activities are defined to include trade or business activities in which the taxpayer does not materially participate, as well as rental activities. Treasury regulations set forth several tests for determining whether a taxpayer is materially participating in an activity. One of these tests bases the determination of material participation on all the facts and circumstances.

The regulations provide two limitations on the application of the facts and circumstances test. First, an individual taxpayer's management services are not taken into account under the facts and circumstances test unless (a) no one else who performs services in connection with the management of the activity receives earned income for such services and (b) no one else performs more services (by hours) in connection with the management of the activity than the taxpayer does. Second, an individual taxpayer cannot meet the

facts and circumstances test with respect to an activity if he participates in it for 100 hours or less during the taxable year. (Treas. Reg. Sec. 1.469-5T(b)(2)(ii) and (iii)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the two regulatory limitations applicable in determining whether an individual meets the facts and circumstances test for material participation in an activity do not apply to certain closely held timber activities. Such closely held timber activities are those whose nature is such that the aggregate hours devoted to management of the activity for any year is generally less than 100 hours.

An activity is treated as closely held for purposes of the provision if at least 80 percent of the ownership interests in the activity is held either by 5 or fewer individuals, or by individuals who are members of the same family (within the meaning of Code section 2032A(e)(2)). An interest in a limited partnership is not treated as a closely held activity for purposes of the provision.

A timber activity means the planting, cultivating, caring, cutting or preparation (other than milling) for market, of trees.

Effective date.—The provision is effective for taxable years beginning after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

20. Treatment of contributions in aid of construction

PRESENT LAW

In general

The gross income of a corporation does not include contributions to its capital. A contribution to the capital of a taxpayer does not include any contribution in aid of construction or any other contribution as a customer or potential customer.

Prior law

Prior to the enactment of the Tax Reform Act of 1986, a regulated public utility that provided electric energy, gas, water, or sewage disposal services was allowed to treat any amount of money or property received from any person as not includible in the gross income of the taxpayer so long as such amount: (1) was a contribution in aid of construction and (2) was not included in the taxpayer's rate base for rate-making purposes. A contribution in aid of construction did not include a connection fee. The adjusted basis of any property acquired with a contribution in aid of construction was zero.

If the contribution was in property other than an electric energy, gas, steam, water, or sewage disposal facility, such contribution was not includible in the gross income of the taxpayer so

long as: (1) an amount at least equal to the amount of the contribution was expended for tangible property which was the purpose motivating the contribution and which was used predominantly in the trade or business of furnishing utility services; (2) the expenditure occurred before the end of the second taxable year after the year that the contribution was received; and (3) certain records were kept with respect to the contribution and the expenditure. In addition, the statute of limitations for the assessment of deficiencies was extended in the case of certain contributions of property other than an electric energy, gas, steam, water, or sewage disposal facility.

These rules were repealed by the Tax Reform Act of 1986.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment restores the contributions in aid of construction provisions that were repealed by the Tax Reform Act of 1986 for amounts relating to water or sewerage disposal services.

Effective date.—The provision is effective for amounts received after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the provision of the Senate amendment.

21. Prohibit transfers of tax benefits and liabilities between savings and loan holding companies and savings associations

PRESENT LAW AND BACKGROUND

For Federal income tax purposes, domestic corporations (including savings and loan associations) that meet certain affiliation tests (generally 80 percent stock ownership) generally may elect to join in the filing of a consolidated return. If the election is made, the Federal income tax liability of the affiliated group generally is determined as if the group is one corporation. One of the principal advantages of electing to file a consolidated return is that the tax losses of some members of the affiliated group may offset the taxable incomes of other members.

Corporations that elect to file consolidated returns often enter into a contractual agreement on how the Federal income tax liability of the group is to be allocated among the members of the group and when payments pursuant to the tax allocation agreement are to be made. These agreements may or may not provide that a member of the group that incurs a tax loss that is used in consolidation to reduce the Federal income tax liability of the affiliated group as a whole is to be reimbursed for the use of the loss.

Provisions governing the Federal regulation of banks contain explicit rules regarding payments for Federal income taxes and the reimbursement of tax benefits between nonregulated bank holding companies and banks that join in the filing of consolidated returns.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment amends the Homeowners Loan Act to provide rules regarding payments for Federal income taxes and the reimbursement of tax benefits between savings and loan holding companies and savings associations that join in the filing of consolidated returns. Under the Senate amendment, a savings association that incurs a taxable loss shall be reimbursed in cash by the holding company to the extent that there is a tax benefit arising from the loss in the consolidated return, as determined in a manner consistent with the allocation of taxes to profitable subsidiaries. The reimbursement shall be based on the amount the savings association would have received had it filed its income tax return on a separate return basis and shall be made no later than the approximate time that the savings association would have received a refund of tax if it had filed a separate return (or, if earlier, at the time the refund is received by the holding company).

A savings association having taxable income which files a consolidated tax return with a holding company shall not transfer to the holding company for payment of taxes an amount in excess of the amount of tax the savings association would have paid had its tax return been filed on a separate return basis. Any such payment shall not be made before the approximate time that such payment is required to be made to the Internal Revenue Service. In no event shall a savings association make any payment to a holding company for a deferred tax liability.

Any tax allocation agreement between a holding company and savings association shall be consistent with this provision.

Not later than 90 days after the date of the enactment of this provision, the Office of Thrift Supervision shall take such actions as are necessary to implement the provision.

Effective date.—The provision applies to payments and refunds of Federal taxes for taxable years ending after September 30, 1990.

The enactment of the provision shall not be construed as indicating that the Office of Thrift Supervision had no discretionary authority prior to such date to effect the same policy by rule, regulation, enforcement action, or otherwise.

The amendment made by the provision shall not apply to any tax benefit described above, if the allocation (and payment) of such tax benefit is made pursuant to, or is governed by, an arrangement that is part of a written contract with the savings association, or its holding company, that is expressly approved in writing by the applicable supervisory authority or deposit insurer, but only if: (1) the contract was entered into before October 1, 1990; (2) the contract remains in effect at the time of the allocation in question; and (3) a portion of such approved tax benefit is allocated for the benefit of the FSLIC Resolution Funds.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

22. Tax treatment of certain cargo containers

PRESENT AND PRIOR LAW

Prior to the enactment of the Tax Reform Act of 1986, an investment tax credit was allowed for certain tangible personal property. The credit was not allowed for property that was used predominantly outside the United States. For purposes of the credit, any container of a United States person that was used in the transportation of property to and from the United States was not property that was used predominantly outside the United States. The investment tax credit generally was repealed by the Tax Reform Act of 1986.

In addition, under both present and prior law, accelerated depreciation is not allowed for any tangible property used predominantly outside the United States. For depreciation purposes, any container of a United States person that is used in the transportation of property to and from the United States is not property that is used predominantly outside the United States.

In Rev. Rul. 90-9, 1990-1 C.B. 46, the Internal Revenue Service ruled that a taxpayer may not use accelerated depreciation with respect to intermodal cargo containers if the taxpayer cannot document that the containers were used substantially in the direct transportation of property to or from the United States during the taxable year. In Rev. Proc. 90-10, 1990-1 C.B. 467, the IRS provided an irrevocable election that allowed taxpayers to use certain specified percentages to determine the aggregate basis of intermodal cargo containers placed in service in 1974 and all subsequent years that would be deemed used in the direct transportation of property to or from the United States (and thus eligible for the investment tax credit and accelerated depreciation). The election was available regardless of whether or not the taxpayer maintained sufficient records to trace the usage of cargo containers.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 5674 as passed by the House, contains a provision substantially identical to the provision described in the conference agreement below.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

In general

The conference agreement provides that a "qualified intermodal cargo container" shall be treated as property described in section 48(a)(2)(B)(v) (as in effect on the day before the date of enact-

ment of the Revenue Reconciliation Act of 1990) and thus eligible for the investment tax credit and accelerated depreciation.

Definitions

For this purpose, a "qualified intermodal cargo container" means any intermodal cargo container of a United States person which, after being placed in service, at all times during the taxable year either: (1) is subject to a qualifying lease; or (2) is being held for lease, moved for purposes of leasing or being available for lease, or maintained or repaired for subsequent lease, by the taxpayer, a lessee or agent of the taxpayer or any other person. The term "qualifying lease" means: (1) any lease to a container user that has one or more trade routes that contact the United States or (2) any short-term lease to a container user. A "container user" means: (1) a person that is in the business of using intermodal cargo containers to ship or transport cargo for other persons, or (2) with respect to an intermodal cargo container, a person that uses the container to ship or transport its own cargo. A container user will be deemed to have one or more trade routes that contact the United States if at any time during the taxable year such person: (1) owns, operates, or charters any vessel that receives or delivers any intermodal cargo container in the United States, or (2) uses any intermodal cargo container to ship cargo to or from the United States. Proof of trade routes may be established by published schedules, U.S. dock records, records of vessel owners, and other bona fide public documents or private records. The term "short-term lease" means: (1) any lease the stated term of which is not more than 50 percent of the class life (within the meaning of section 168(i)(1)) of the container and (2) any lease under a lease agreement under which the lessee is not required to use or hold the container for a specified term. The term "lease" means a lease or sublease.

Other rules

No inference is to be drawn from this provision as to the application of section 48(a)(2)(B)(v) (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) or section 168(g)(4)(e) to containers that are not qualified intermodal cargo containers or to containers placed in service after December 31, 1989.

Any election made under Rev. Proc. 90-10 prior to the date of enactment of this provision may be revoked without the consent of the Secretary of the Treasury or his delegate. A revoked election shall be treated as never having been made. Such revocation must be made within 180 days after the date of enactment by filing with the Secretary of the Treasury or his delegate (1) a statement describing the election being revoked and indicating that the election is being revoked and (2) an amended return consistent with such revocation. The statute of limitations shall not bar a claim for refund attributable to a revocation of a prior election under Rev. Proc. 90-10.

Effective date.—The provision generally will apply to all intermodal cargo carriers placed in service before January 1, 1990. The rules regarding the revocation of the election under Rev. Proc. 90-10 shall take effect on the date of enactment of the provision.

G. Other Excise, Employment, and Estate and Gift Tax Provisions

1. Exemption from truck excise tax for certain nonprofit educational organizations

Present Law

Present law imposes a 12-percent retail excise tax (sec. 4051) on the first sale of heavy highway trucks and truck trailers (including parts or accessories sold on or in connection with the truck or truck trailer). The tax does not apply to trucks weighing 33,000 pounds or less or to trailers weighing 26,000 pounds or less (gross vehicle weight). The tax is scheduled to expire after September 30, 1999. Revenues from the tax are transferred to the Highway Trust Fund.

House Bill

No provision.

Senate Amendment

The Senate amendment provides an exemption from the truck excise tax for trucks or truck trailers assembled by students and sold as a part of a program included in the regular curriculum of a nonprofit education organization, if the proceeds from the sale are used solely for the purpose of defraying costs incurred in such program.

A credit or refund is allowed if such truck tax is actually paid by such an educational organization.

Effective date.—The provision is effective for sales after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Excise tax on certain reloaded ammunition

Present Law

An 11-percent excise tax is imposed on the first sale of certain firearms, shells, and cartridges. Certain taxable shells and cartridges ("shells") may be reloaded for reuse. If the owner of the shells returns them to a commercial reloader and receives back the very same shells after reloading, no tax is imposed. If shells of the identical type, but not the exact same shells, are reloaded and returned to the owner, tax is imposed.

House Bill

No provision in H.R. 11 (However, H.R. 2735 as passed by the House contains the same provision described under the conference agreement below.)

Senate Amendment

No provision.

Conference Agreement

The conference agreement expands the exception from tax for reloaded shells to also apply to commercially reloaded shells when reloaded (used) shells of an identical type and number are returned to the owner but not necessarily the very same shells.

Effective date.—Date of enactment.

3. Exemption from retail excise tax for trucks used to mix explosive chemicals

Present Law

An excise tax is imposed on retail sales of truck chassis and bodies with a gross vehicle weight over 33,000 pounds. The excise tax equals 12 percent of the retail sale price of heavy trucks subject to the tax. This tax will not apply to sales made after September 30, 1999.

House Bill

No provision.

Senate Amendment

The amendment provides an exception from the 12-percent retail excise tax for truck equipment used to mix explosive chemicals. This exemption applies only to equipment (e.g., mixing units) used to process, prepare, or load explosive products. The gross vehicle weight of the truck is to be determined inclusive of the exempt explosives mixing device.

Effective date.—The exemption is effective for retail sales of explosive handling equipment made after March 31, 1983.

Conference Agreement

The conference agreement follows the Senate amendment.

4. Extension of period for credit or refund of certain overpayments of windfall profit tax on domestic crude oil

Present Law

Generally, a claim for credit or refund of an overpayment of any tax imposed by the Code in respect of which tax the taxpayer is required to file a return must be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever period expires later. If no return was filed by the taxpayer, the claim for credit or refund must be filed within 2 years from the time the tax was paid. No credit or refund is allowed unless the claim for credit or refund is filed within the prescribed time period.

House Bill

No provision.

SENATE AMENDMENT

The Senate amendment extends until one year after date of enactment the time for filing a claim for credit or refund of any overpayment of the windfall profit tax on domestic crude oil by the Wilkinson County School District, in the State of Mississippi, for any period ending before January 1, 1983.

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

5. *Application of harbor maintenance excise tax to ship passenger fares*

PRESENT LAW

A harbor maintenance excise tax ("harbor tax") of 0.125 percent of value applies generally to commercial cargo, including passengers transported for compensation or hire (sec. 4462(a)(3)). In the case of transportation of passengers for hire, the term "value" means the actual charge paid for such service or the prevailing charge for comparable service if no actual charge is paid (sec. 4462(a)(5)). Questions have arisen as to whether certain amounts (such as pre- and post-cruise airfare and lodging included in the package price and certain other cruise-related passenger fees or charges) charged passengers for a ship cruise are included in the base for the harbor tax.

It is understood that the U.S. Customs Service (which collects and administers the harbor tax) has recently determined that pre- and post-cruise airfare and lodging are excluded from the tax base.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment makes two changes to the statutory definition of "value" for applying the harbor tax to ship passenger fares.

(1) The amendment clarifies that the tax base for cruise ship fares does not include any amounts actually paid for pre- and post-cruise air or land transportation and lodging, including any separately stated transportation or lodging taxes and the pro rata share of travel agent commissions properly allocable to such air or land transportation.

(2) The amendment specifically excludes from the harbor tax base the cost of separately stated per-passenger taxes, fees or charges imposed by domestic or foreign governmental units (e.g., the $3 Federal ship passenger departure tax, State or local port charges on passengers, passenger head taxes or fees at foreign ports, Customs and Immigration per-passenger fees, etc.). The amendment does not exclude any per-vessel taxes, fees or charges.

Effective date.—Transportation beginning on or after November 1, 1992.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

6. Employment tax status of certain fishermen

PRESENT LAW

Under present law, service as a crew member on a fishing vessel is generally excluded from the definition of employment for purposes of income tax withholding on wages and for purposes of the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) taxes if the operating crew of the boat normally consists of fewer than 10 individuals, the individual receives a share of the catch based on the total catch, and the individual does not receive cash remuneration other than proceeds from the sale of the individual's share of the catch. Crew members to which the exemption applies are subject to self-employment taxes. Special reporting requirements apply to the operators of boats on which exempt crew members serve.

HOUSE BILL

No provision. (However, sec. 121 of H.R. 2735 as passed by the House contains a provision that is the same as the Senate amendment except that it does not modify the reporting requirements and it is effective for remuneration paid after the date of enactment.)

SENATE AMENDMENT

The operating crew of a boat is treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals. In addition, the exemption applies if the crew member receives, in addition to the cash remuneration permitted under present law, cash remuneration which does not exceed $100 per trip, is contingent on a minimum catch, and is paid solely for additional duties (e.g., mate, engineer, or cook) for which additional cash remuneration is traditional. The reporting requirements applicable to boat operators are modified to take into account the additional cash remuneration that may be paid under the provision.

Effective date.—The provision applies to remuneration paid after December 31, 1992. In addition, the provision applies to remuneration paid after December 31, 1984, and before January 1, 1993, unless the payor treated such remuneration when paid as being subject to wage withholding and employment taxes.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

7. FICA exemption for full-time students employed by seasonal children's camps

PRESENT LAW

Under present law, wages are subject to taxation under the Federal Insurance Contributions Act (FICA) unless specifically exempted. Wages paid to full-time students employed by seasonal children's camps are not specifically exempted.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 5656 as passed by the House contains a provision that is the same as the conference agreement.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

Under the conference agreement, wages paid to a full-time student employed for less than 13 calendar weeks in a calendar year by a seasonal children's camp are exempt from FICA taxation in that year.

Effective date.—The provision is effective for wages paid on or after October 1, 1993.

8. Special estate tax valuation recapture

PRESENT LAW

A Federal estate tax is imposed on the value of property passing at death. Generally, the value of property is its fair market value at its highest and best use, i.e., the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

Under section 2032A of the Code, the executor may elect to value certain "qualified real property" used in farming or another qualifying trade or business at its current use value rather than its highest and best use value. If, within a specified period of time after the death of the decedent, the "qualified heir" who acquired the real property ceases to use such property in its qualified use, an additional estate tax is imposed in order to "recapture" the benefit of the special use valuation.

For this purpose, the specified period of time is presently 10 years with respect to qualified heirs of decedents who died on or after January 1, 1982 and 15 years with respect to qualified heirs of decedents who die before January 1, 1982. Until the specified period of time has lapsed with respect to a property, the Internal Revenue Service retains a lien on such property as security for the possible imposition of the additional estate tax.

House Bill

No provision in H.R. 11. (However, H.R. 5647, as passed by the House, contains the same provision as included in the conference agreement as described below.)

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides that the 10-year period set forth in section 2032A(c)(1) shall be extended to apply with respect to qualified heirs of decedents who died before January 1, 1982.

Effective date.—The provision is effective after December 31, 1992.

H. Other Provisions

1. Definition of former spouse under CIA retirement and disability system

Present Law

Under the Central Intelligence Agency Retirement and Disability System (CIARDS), an individual who was divorced from a CIARDS participant before December 4, 1991, does not qualify as a former spouse if the individual did not live with his or her spouse for at least 10 years of which 5 years or more were while the spouse was performing services as a CIA employee outside the United States.

House Bill

No provision. (However, H.R. 5651 as passed by the House contains a provision that is substantially the same as the conference agreement.)

Senate Amendment

No provision.

Conference Agreement

Under the conference agreement, an individual who was divorced on or before December 4, 1991 from a participant or retired participant in CIARDS and who was married to such participant for not less than 10 years during the participant's creditable service, at least 5 years of which was spent by the participant as a CIA employee outside of the United States (or otherwise in a position that qualifies the individual as a participant), generally is entitled to a survivor annuity equal to 55 percent of the greater of the unreduced amount of the participant's annuity, or the unreduced amount of what such annuity would be if the participant had not elected a lump-sum distribution. In addition, such former spouse generally is entitled to a retirement annuity equal to 50 percent of

the pro rata share of the participant's annuity, and to continuation health care coverage.

The retirement and survivor annuities provided under the bill are payable from the CIARDS Fund. The participant's benefits are not affected.

Effective date.—The provision is effective as of October 1, 1993. No benefits provided under the bill are payable with respect to any period before such date.

2. Mount Rushmore Commemorative Coin Act

PRESENT LAW

Under the Mount Rushmore Commemorative Coin Act (P.L. 101-332), the Secretary of the Treasury is to issue Mount Rushmore commemorative coins (five dollar gold coins, one dollar silver coins, and half dollar clad coins) for sale to the public. All sales require a surcharge per coin ($35 for the five dollar gold coins, $7 for the one dollar coins, and $1 for the half dollar coins).

Of the total revenues received from the surcharges, one half is to be paid promptly to the Mount Rushmore National Memorial Society of Black Hills ("the Society") to assist the Society's efforts to improve, enlarge, and renovate the Mount Rushmore National Memorial. The other half of the revenues from the surcharges is to be returned to the Federal Treasury for purposes of reducing the national debt.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment directs that the Society is to be paid during fiscal year 1993 an advance from the Treasury in the amount of $18,750,000. Any amount received from the surcharge revenues above the $18,750,000 is to be returned to the Federal Treasury for the purposes of reducing the national debt.

However, if prior to enactment of this Act, any amount of surcharges that have been received by the Treasury and paid into the Treasury for purposes of reducing the national debt shall be paid out of the Treasury during fiscal year 1993 to the net amount extent necessary to comply with the directive to pay the Society the $18,750,000 under this Act. Amounts paid pursuant to this procedure shall be out of funds not otherwise appropriated.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Misuse of symbols, emblems or names related to the Department of the Treasury

PRESENT LAW

There are currently no provisions in present law prohibiting the use of symbols, emblems and names of the Department of the Treasury (and its subsidiary agencies) in connection with mailings and other solicitations.

HOUSE BILL

The House bill would prohibit the use of Treasury-related words, letters, symbols, or emblems in a manner which could reasonably by interpreted or construed as conveying a false impression that such activity is connected with the Department of the Treasury or any of its subsidiary agencies. A civil penalty of up to $5,000 per violation of this section. Each individual piece of mail or separate solicitation would be considered a separate violation. Any determination of whether there is a violation of this section would be made without regard to use of a disclaimer of affiliation with the Federal Government. The Secretary of the Treasury, by May 1, 1994, would by required to provide to the House Ways and Means and Senate relating to the implementation of this section.

Effective date.—The provision is effective on enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill. The conferees agree to clarify that the reproduction of Treasury-related public documents or publications will not, in itself, be considered as conveying a false impression that such activity is connected with the Department of the Treasury.

I. OTHER STUDIES AND REPORTS

1. Treasury study on Japanese capital and securities markets

PRESENT LAW

Present law requires no studies of Japanese capital and securities markets.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the Secretary of the Treasury, in consultation with the Chairman of the Securities and Exchange Commission, the United States Trade Representative, and others, is to conduct a study of Japanese capital and securities markets. The study is to examine the structures, operations, practices, and regu-

lation of Japan's capital and securities markets, and their implications for the United States. The Secretary is to report on the study to the Congress within one year of the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

2. Treasury study of recovery period for the depreciation of semi-conductor manufacturing equipment

PRESENT LAW

Equipment that is used in the manufacture of semi-conductors is treated as 5-year property under the accelerated cost recovery system as modified by the Tax Reform Act of 1986. Consequently, the depreciation deductions for semi-conductor manufacturing equipment are determined by using a 5-year recovery period, the applicable convention, and the 200-percent declining balance method switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

The Department of Treasury is required to monitor and analyze the actual experience of taxpayers with respect to depreciable assets and to report the findings to Congress.

HOUSE BILL

No provision. H.R. 2735 contains a provision identical to the provision of the Senate amendment.

SENATE AMENDMENT

The Senate amendment requires the Department of Treasury to study the appropriate recovery period and class life under section 168 of the Code for semi-conductor manufacturing equipment. The results of the study are to be submitted to the House Committee on Ways and Means and the Senate Committee on Finance before April 1, 1993.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Treasury study of travel expenses of loggers

PRESENT LAW

Individuals who are in the trade or business of cutting and skidding timber often incur travel expenses in connection with their trade or business. Some believe that there may be unclarity in the treatment of those travel expenses for tax purposes.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Secretary of the Treasury is required to conduct a study with respect to the deductibility of the travel expenses of an individual who is in the trade or business of cutting and skidding timer.

Effective date.—The report is due not later than July 1, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Congressional Budget Office study on municipal bonds

PRESENT LAW

Interest on bonds to finance governmental activities of State and local governments is generally tax-exempt (Code sec. 103). Interest on private activity bonds (i.e., bonds to finance activities of any person other than a State or local government) is taxable unless a specific exception is provided in the Code. Issuers generally are required to rebate arbitrage (earned by investing bond proceeds at a return greater than the bond yield) to the Federal government.

Section 1317(44) of the Tax Reform Act of 1986 exempts certain pool bonds from the arbitrage rebate requirement.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the Congressional Budget Office is to conduct a study of tax-exempt municipal bond pools subject to special transition rules under the Tax Reform Act of 1986. In particular, the study is to compile statistics on the types of capital projects financed, the Federal, State, and local budgetary impacts, and the need, if any, to increase the permissible bonding authority allowed under the Tax Reform Act of 1986. The Congressional Budget Office is to report on the study to the Senate Committee on Finance and the Senate Budget Committee by December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except it requires that the study be delivered to the House Committee on Ways and Means and the House Budget Committee in addition to the Senate Committee on Finance and the Senate Budget Committee.

5. Require annual report on Federal finances

PRESENT LAW

Present law requires that instructions for the individual income tax returns include pie charts to indicate the major Federal outlay and income categories. These pie charts are based on the

most recent fiscal year data available when the instructions are compiled.

In addition, present law requires that prior to the first Monday in February of each year, the President submit to Congress the Budget of the United States for the following fiscal year. This budget is required to include information on the activities and function of the Federal government. In particular, information on receipts, appropriations, expenditures, Federal debt outstanding, tax expenditures, net domestic savings, merchandise trade and current accounts, and other items, is required. Moreover, the Federal budget has traditionally included a series of historical tables providing information on the Federal financial situation over a time period of several years. The Federal budget is available for sale to the public by the U.S. Government Printing Office.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires an annual financial report for the Federal government to be prepared by the Office of Management and Budget (OMB) and to be distributed to the public by the Secretary of Treasury. The report would include information on the most recent 5-year trends in receipts, expenditures, assets, liabilities, and public debt. A summary of the report would be placed on the inside front cover of the instruction booklet for the annual income tax forms distributed to individual taxpayers. The complete report would be available to any taxpayer who requested a copy. This request could be made by so designating in space provided on the annual tax return. The Secretary of Treasury would be permitted to impose fees to cover the costs of processing requests for this report. The Senate amendment also would authorize an additional $10 million for 1993 for Treasury and OMB, subject to future appropriations.

Effective date.—This requirement is effective for instructions prepared for taxable years beginning after date of enactment.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment. However, the annual report would be jointly prepared by the Secretary of Treasury and the Director of OMB. The requirement that the annual tax return include a space for taxpayers to request a copy of the report is deleted. Instead, instructions for obtaining a copy of the report would be required to be included in the instructions to the annual income tax forms distributed to individual taxpayers.

6. PBGC report on employers with underfunded pension plans

PRESENT LAW

There is no requirement for the Pension Benefit Guaranty Corporation (PBGC) to report to the Congress on underfunded pension plans.

HOUSE BILL

No provision. (However, H.R. 3837 as passed by the House has a provision that is substantially the same as the conference agreement below.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement requires the PBGC to submit a report to the Congress each year listing: the name of each contributing sponsor of 1 or more pension plans that have underfunded pension liabilities aggregating more than $25 million, and the name of each contributing sponsor with underfunded liabilities in excess of $5 million and with respect to which a minimum funding waiver has been granted in excess of $1 million. The report will be based upon information that can be publicly disclosed by PBGC. The report is due on January 31 of each calendar year after 1991.

Effective date.—Date of enactment.

J. USER FEE PROVISIONS

1. Repeal of recreational boat user fee

PRESENT LAW

Under the 1990 Budget Act, the Secretary of Transportation is directed to establish a "fee or charge" to be collected annually in fiscal years 1991-1995 from owners or operators of "recreational vessels" greater than 16 feet in length. The boat user fee is to be imposed as follows: (a) for vessels of greater than 16 feet but less than 20 feet, not more than $25; (b) for vessels of 20 feet but less than 27 feet, not more than $35; (c) for vessels of 27 feet but less than 40 feet, not more than $50; and (d) for vessels of 40 feet or more, not more than $100.

The Coast Guard issued rules implementing the boat user fee, at the maximum levels allowed under the 1990 Act, effective July 31, 1992. Subject to several exemptions provided by the 1990 Act and/or by the Coast Guard rules, the boat user fee applies to vessels operated on the navigable waters of the United States where the Coast Guard has a presence. Among the exempt vessels are: manually powered boats (e.g., canoes, kayaks, and rafts), sailboards, vessel tenders, unpowered houseboats, and vessels of nonprofit organizations.

Revenues from the boat user fee are deposited in the General Fund of the Treasury as offsetting receipts for Coast Guard activities.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 2056 as passed by the House provides for a phased repeal of the boat user fee similar to the Senate amendment.)

SENATE AMENDMENT

The Senate amendment provides a phased repeal of the boat user fee, according to the following schedule:

(1) for fiscal year 1993—

(a) vessels of more than 21 feet but less than 27 feet, a fee of not more than $35;

(b) vessels of 27 feet but less than 40 feet, a fee of not more than $50;

(c) vessels of 40 feet or more, a fee of not more than $100;

(2) for fiscal year 1994—

(a) vessels of at least 37 feet but less than 40 feet, a fee of not more than $50; and

(b) vessels of 40 feet or more, a fee of not more than $100; and

(3) for fiscal year 1995—no fee.

Effective date.—October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Imposition of Automated Tariff Filing and Information System and fee

PRESENT LAW

Water common carriers in United States foreign and domestic offshore shipping are required to file tariffs with the Federal Maritime Commission (FMC). These tariffs and service contracts have been filed on paper.

In recent years, the FMC has been designing a computer system to allow water common carriers to file the tariffs electronically. This computer system is known as the Automated Tariff Filing and Information System ("ATFI"). The information currently required to be filed under section 8(a)(1) of the Shipping Act of 1984 (46 App. U.S.C. 1707), and includes all rates, charges, classifications, rules and practices assessed by a carrier between all points or ports on a route and any through transportation rate a carrier has established.

HOUSE BILL

No provision in H.R. 11. (However, H.R. 2056 as passed by the House provides the same ATFI system and fee as in the Senate

amendment except with an effective date of June 1, 1992, and with the repayable advance effective in fiscal year 1992.)

SENATE AMENDMENT

Imposition of fee

The Senate amendment requires that water common carrier tariffs be filed electronically not later than July 1, 1992, and imposes a fee of 46 cents for each minute of remote computer access to the information in the ATFI. Purchase of the entire database in the ATFI will be allowed. If the purchased information (or access thereto) is then used by the purchase, resold or otherwise disseminated ("secondary use"), the 46-cents-per-minute fee applies for each separate computer access to the information. There is no charge for filing of the tariffs with the FMC. Federal agencies using this information are exempt from the fee.

The FMC access fee will expire after September 30, 1995.

The revenues from the FMC access fee in excess of the amounts necessary for FMC administrative costs (and repayment of the Treasury advance) are to be retained in the General Fund, as offsetting budget receipts.

Repayable advances

The Secretary of the Treasury is to make available not more than $4 million to the FMC, as a repayable advance (to remain available until expended), for FMC use in completing and upgrading the capacity of the ATFI system. Such repayable advances are to be repaid (with interest) to the Treasury not later than September 30, 1995.

Effective date

The Senate amendment generally is effective on July 1, 1992. The repayable advance is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the effective date for the ATFI System and FMC access fee is January 1, 1993.

CONTENTS

VIII. CUSTOMS AND TRADE PROVISIONS

A. TRADE PROMOTION

Page

1. Generalized System of Preferences (GSP) Eligibility for Former Soviet Union (sec. 9301 of the Senate amendment) 1203
2. Western Hemisphere Trade Center (sec. 9244 of the Senate amendment) 1204

B. CUSTOMS AND TRADE AGENCY AUTHORIZATIONS AND REPORTS; COMPETITIVENESS POLICY COUNCIL

PART I. AUTHORIZATION AND REPORTS

1. Customs and Trade Agency Authorizations (sec. 301 of H.R. 5100; sec. 1 of S. 2880) 1205

2. Customs Forfeiture Fund (sec. 302 of H.R. 5100; sec. 2 of S. 2880) 1206
3. Repeal of East-West Trade Statistics Monitoring System (sec. 303 of H.R. 5100) 1206
4. Customs Personnel Airport Work Shift Regulation (sec. 305 of H.R. 5100) 1207
5. Reports on Customs Issues (sec. 3 of S. 2880) 1207

PART II. COMPETITIVENESS POLICY COUNCIL

1. Competitiveness Policy Council Act Amendments (sec. 4 of S. 2880) 1207

C. CUSTOMS MODERNIZATION

1. Customs Modernization and Informed Compliance Act (title II of H.R. 5100; H.R. 5643) 1208

D. CUSTOMS OFFICER PAY REFORM

1. Overtime and Premium Pay for Customs Officers (sec. 201 of H.R. 3837) 1211
2. Foreign Language Proficiency Awards for Customs Officers (sec. 202 of H.R. 3837) 1212
3. Appropriations Reimbursements from the Customs User Fee Account (sec. 203 of H.R. 3837) 1213
4. Treatment of Certain Pay of Customs Officers for Retirement Purposes (sec. 204 of H.R. 3837) 1213
5. Reports (sec. 205 of H.R. 3837) 1214

E. MISCELLANEOUS TRADE PROVISIONS

1. Review of the Compliance by Foreign Countries with Bilateral Trade Agreements (sec. 102 of H.R. 5100) 1214
2. Caribbean Basin Initiative (CBI) Treatment of Footwear and Leather-Related Products (sec. 6307 of the Senate amendment) 1215
3. Special Rule Regarding Circumvention of Certain Antidumping Orders (sec. 9241 of the Senate amendment) 1216

VIII. TRADE

A. TRADE PROMOTION

1. Generalized System of Preferences (GSP) eligibility for former Soviet Union

PRESENT LAW

Section 502(b) of the Trade Act of 1974, as amended, provides that the Union of Soviet Socialist Republics, and thus its successor republics, is ineligible for designation under GSP.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment removes the Union of Soviet Socialist Republics from the list of countries ineligible for designation under the GSP.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Western Hemisphere Trade Center

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment authorizes the Commissioner of Customs, after consultation with the International Trade Commission (ITC), to make a grant to an institution of higher education (or a consortium of such institutions) to assist in establishing and operating a Center for the Study of Western Hemispheric Trade. The amendment requires consultations with appropriate authorities in planning the Center, sets forth selection criteria and identifies the Center's activities. The amendment authorizes the appropriation of $10 million for fiscal year 1993 and such sums as may be necessary in the three succeeding fiscal years.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modifications: (a) technical amendments to the findings; (b) the Commissioner of Customs shall consult with the Texas Higher Education Coordinating Board rather than the ITC in selecting and establishing the site and making grants; (c) changing the date of establishment from June 30, 1993 to February 1, 1994, the initial authorization from FY 1993 to FY 1994, and the initial grant to December 1, 1993; (d) adding to Center activities to implement cooperative agreements and academic exchange programs with the complementary North/South Center at the University of Miami; and (e) requiring the Commissioner of Customs to report annually to the Senate Committee on Finance and the House Committee on Ways and Means on the operation of the Center.

The conference believe that the establishment of a Center for the Study of Western Hemispheric Trade in Texas will effectively complement the activities of the already established North/South Center in Florida and that both Centers are necessary given the importance of the region for economic, political, and cultural relations with the United States. The conferees also believe that the activities of these two Centers will be mutually enhanced through effective collaboration and intend that the newly-created Texas Center will implement cooperative agreements and academic exchanges with the North/South Center.

B. Customs and Trade Agency Authorizations and Reports; Competitiveness Policy Council

Part I—Authorizations and Reports

1. Customs and trade agency authorizations

Present Law

Section 101 of Public Law 101-382, the Trade Act of 1990, authorized appropriations of $41,170,000 for FY 1991 and $44,052,000 for FY 1992 ITC. An amount not to exceed $2,500 was authorized to be used for reception and entertainment expenses, subject to the approval of the Chairman of the Commission. Section 102 of the Trade Act of 1990 authorized appropriations for the Customs Service for FY 1991 and FY 1992. For salaries and expenses for noncommercial operations, section 102 of the Act authorized $516,217,000 for FY 1991 and $542,091,000 for FY 1992. For salaries and expenses for commercial operations, the Act authorized $672,021,000 for FY 1991 and $705,793,000 for FY 1992. Section 102 also authorized $143,047,000 for FY 1991 and $150,199,000 for FY 1992 for operation (including salaries and expenses) of the air and marine interdiction programs. Finally, section 103 of the Trade Act of 1990 authorized $23,250,000 for FY 1991 and $21,077,000 for FY 1992 for the Office of the United States Trade Representative (USTR). Section 103 also provided that, of the authorized amounts, not to exceed $98,000 may be used for entertainment and representation expenses of USTR.

House Bill

Section 301 of H.R 5100 as passed by the House authorizes appropriations for the ITC of $45,152,000 for FY 1993 and $48,042,000 for FY 1994, and provided that not more than $2,500 may be used for reception and entertainment expenses, subject to the approval of the Chairman of the Commission. For the Customs Service, section 301 provides the following authorizations: for noncommercial operations, $536,582,000 for FY 1993 and $552,680,000 for FY 1994; for commercial operations, $790,505,000 for FY 1993 and $814,221,000 for FY 1994. For operation and maintenance of the air and marine interdiction program, section 301 authorizes appropriations of $138,983,000 for FY 1993 and $143,152,000 for FY 1994. For USTR, section 301 authorizes appropriations of $21,697,000 for FY 1993 and $22,435,000 for FY 1994 and provides that, of the authorized amounts, not to exceed $98,000 may be used for entertainment and representation expenses.

Senate Amendment

Section 1 of S. 2880 as passed by the Senate authorizes the same amounts for the ITC and USTR as the House bill for both FY 1993 and FY 1994. The Senate bill also authorizes the same amount as the House bill for salaries and expenses for the Customs Service for noncommercial operations for FY 1993; for FY 1994, the Senate bill authorizes $558,045,000 for FY 1994. For commercial operations, the Senate bill authorizes $798,470,000 for salaries and ex-

penses for FY 1993 and $830,408,000 for FY 1994. For operation and maintenance of the air and marine interdiction program, the Senate bill authorizes the same amount as the House bill for FY 1993. For FY 1994, the Senate bill authorizes $144,542,000.

CONFERENCE AGREEMENT

The conference agreement retains the amounts for the ITC and USTR that are in the House bill and Senate amendment. The conference agreement authorizes appropriations for the Customs Service of $536,582,000 for noncommercial operations for FY 1993 and $558,045,000 for FY 1994. For commercial operations, the conference agreement authorizes $795,000,000 for FY 1993 and $826,800,000 for FY 1994. For operation and maintenance of the air and marine interdiction program for FY 1994, the conference agreement authorizes appropriations of $144,000,000.

2. Customs forfeiture fund

PRESENT LAW

Section 613A of the Tariff Act of 1930 provides for a two-year authorization for discretionary uses of the Customs Forfeiture Fund.

HOUSE BILL

Section 302 of H.R. 5100 as passed by the House authorizes appropriations of $15,000,000 in FY 1993 and $15,450,000 in FY 1994 for discretionary uses of the Customs Forfeiture Fund.

SENATE AMENDMENT

Section 2 of S. 2880 as approved by the Senate authorizes the same amount as the House bill for FY 1993 appropriations for the Customs Forfeiture Fund. For FY 1994, the Senate bill authorizes appropriations of $15,600,000.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

3. Repeal of East-West trade statistics monitoring report

PRESENT LAW

Section 410 of the Trade Act of 1974 as amended (19 U.S.C. 2440) established the East-West Trade Statistics Monitoring System. It requires the ITC to monitor U.S. imports from, and exports to, non-market economy countries. Such data must be published and transmitted to Congress each quarter.

HOUSE BILL

Section 303 of H.R. 5100 as passed by the House repeals section 410.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

4. Customs personnel airport work shift regulation

PRESENT LAW

19 U.S.C. 58c requires the Customs Service to consult with the Treasury Department Advisory Committee on Commercial Operations (COAC) before implementing changes in work shifts for inspectors at airports.

HOUSE BILL

Section 305 of H.R 5100 as passed by the House repeals this requirement.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

5. Reports on customs issues

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

Section 3 of S. 2880 as passed by the Senate requires the Secretary of the Treasury to submit reports to the Congress on personnel issues, staffing, and operations at selected ports of entry.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill, with an amendment to require an additional report.

PART II—COMPETITIVENESS POLICY COUNCIL

1. Competitiveness Policy Council Act amendments

PRESENT LAW

The Competitiveness Policy Council Act established the Competitiveness Policy Council, identified the duties of the Council, provided for the appointment of an Executive Director and staff, provided for the preparation and submission to the President and

the Congress of an annual report. The Act also authorized appropriations for FY 1991 and FY 1992 of not to exceed $5,000,000.

HOUSE BILL

No provision.

SENATE AMENDMENT

Section 4 of S. 2880 as passed by the Senate authorizes appropriations of not to exceed $2,500,000 for FY 1993 and FY 1994. The Senate bill also renames the Council the National Competitiveness Policy Commission. The bill revises the duties of the Commission to require the preparation, publication and distribution of reports that contain the analysis and recommendations of the Commission and comment on the overall competitiveness of the American economy and require the submission of an annual report to the President and the Congress. The Senate bill also amends the compensation provisions for the Executive Director and for full-time staff, provides for the establishment of Senior Executive Service positions and the appointment of temporary staff, and gives the Commission contracting authority.

CONFERENCE AGREEMENT

The conference agreement follows the Senate provision.

C. CUSTOMS MODERNIZATION AND INFORMED COMPLIANCE ACT

PRESENT LAW

The commercial operations of the U.S. Customs Service are governed chiefly by the Tariff Act of 1930, as amended. That Act includes provisions setting forth the requirements for entry, examination, and clearance of imported merchandise; penalties for violations of the customs laws; procedures for protesting Customs' decisions, as well as judicial enforcement of Customs' decisions; requirements for invoices, manifests, bonds and other entry documents; procedures for appraisement, liquidation and reliquidation; and requirements for the arrival, reporting and entry of vessels and other related matters.

HOUSE BILL

Title II of H.R. 5100 as passed by the House includes a number of provisions aimed at modernizing the operations of the Customs Service. The bill addresses four major issues: (1) the facilitation of Customs' processing of merchandise through automation, including the authorization of the National Customs Automation Program (NCAP); (2) improving compliance with U.S. customs laws by adopting or, where appropriate, increasing penalties for non-compliance; (3) providing the trade community with greater certainty concerning Customs' rules and regulations ("informed compliance"); and (4) streamlining Customs' operations through a number of administrative changes.

In order to facilitate entries, the bill provides the statutory authority to establish the NCAP and authorizes the remote filing of

certain entry documents, which would permit an importer to file the necessary information from a single location regardless where the merchandise arrives in the United States or where it is released by the Customs Service. The bill also permits importers, in order to cut costs through the submission of information in batch form, to file electronically and periodically summaries of the information now contained in individual entry summaries. In addition, importers will be permitted to file "reconciliation" statements, permitting Customs to finalize the duty assessment process by liquidating the underlying entry as to all issues (*e.g.*, classification, appraisement) covered by the entry, except for the issues identified by the importer as requiring the submission of additional information not currently available to the importer. This additional information will be contained in a reconciliation statement, which will in turn be liquidated by Customs. The bill also permits importers to pay duties and fees periodically, with interest.

Other provisions aimed at facilitating the entry of merchandise include changes and clarifications to the laws regarding duty drawback, the elimination of requirements to provide unnecessary documents or information, and changes updating the laws regarding the entry and clearance of vessels.

The bill also contains a number of provisions aimed at improving compliance with the customs laws, in exchange for the steps that Customs will take to facilitate the entry of merchandise. These measures chiefly take the form of penalties for failure to provide accurate information or to keep the records that will be necessary for Customs to audit or review entries of merchandise after they have been cleared through Customs.

The bill makes clear that penalties that currently apply to false, forged or altered documents will also apply to information submitted electronically. In addition, importers will be required to exercise "reasonable care" in entering merchandise; failure to do so will subject importers to civil penalties. The bill also subjects additional parties to the recordkeeping requirements of the law and establishes a new administrative penalty if parties fail to produce the records required by Customs to audit or review entries of merchandise. Penalties are also established for the filing of false duty drawback claims. The bill also establishes two voluntary compliance programs, a "Recordkeeping Compliance Program" and a "Drawback Compliance Program," in which Customs will be required to inform participants of their rights and obligations concerning recordkeeping and the filing of drawback claims.

The concept of "informed compliance" is addressed in the bill in a number of provisions. "Informed compliance" is premised on the belief that importers have a right to be informed about Customs rules and regulations, as well as interpretive rulings and directives, and to expect certainty that Customs will not unilaterally change the rules without providing importers with proper notice and an opportunity to respond.

To expedite the entry of merchandise, the bill authorizes Customs to accredit private laboratories and commercial gaugers, and to accept quantity and analysis results from such accredited facilities, although Customs will always reserve the right to independently test, analyze or quantify merchandise. The bill also estab-

lishes specific procedures for the detention of merchandise by Customs and guarantees recourse to the Court of International Trade (CIT) in cases where Customs fails to make a timely decision concerning the admissibility of detained merchandise. The bill also clarifies the circumstances under which merchandise may be seized and forfeited; it is intended to codify existing practices. Additional provisions relate to Customs protest procedures, the publication of interpretive rulings and appeals of advertise interpretive rulings, and the conduct of regulatory audits.

The bill also includes a number of measures aimed at streamlining Customs' operations and improving the productivity of the Service. For example, Customs will be authorized to use private collection agencies to recover money owned to the U.S. Government under the Customs laws. In addition, other agencies on whose behalf Customs collects fees will be required to reimburse Customs for its services. The bill also increases the specific dollar limits that authorize eligibility for Customs to issue administrative exemptions from duty and taxes on articles such as gifts and personal and household goods and authorizes Customs to waive the collection of duty where the duty is so low that the expense and resources required to process the entry are disproportionate to the revenue that would be collected. The bill requires reports to Congress regarding the collection of duties imposed under the antidumping and countervailing duty laws, compliance with the laws enforced by Customs, a review of courier services and the distribution of costs of Customs cargo examination program. For a more detailed discussion of all of the changes made by the House bill, see the report of the Committee on Ways and Means accompanying H.R. 5100 (House Report No. 102-607).

SENATE AMENDMENT

The Senate version of the Customs Modernization and Informed Compliance Act is contained in H.R. 5643, as reported by the Committee on Finance. The bill is almost identical to the House bill, with two exceptions. The Senate bill modifies the National Customs Automation Program with respect to remote filing. Under the Senate bill, the circumstances under which documents may be remotely filed are limited. The Senate bill provides that, while core entry information may be filed remotely, any additional information that is required for the release of merchandise and that Customs cannot accept electronically may *not* be filed remotely. Additional information that is *not* necessary for the release of merchandise and that cannot be accepted electronically may be filed remotely, but only after December 31, 1998. The Senate bill also requires a number of comprehensive reports to the Congress before remote filing may be implemented on a permanent basis and requires a 30-session-day layover period before permanent implementation of remote filing. The Senate bill also requires that Customs must board a sufficient number of vessels to ensure compliance with the laws it enforces. For a more detailed discussion of the changes made by the Senate amendment, see the report of the Committee on Finance accompanying H.R. 5643 (Senate Report No. 102-430).

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill, with technical and conforming amendments. However, due to revenue considerations, the conference agreement also deletes the provisions increasing administrative exemptions and delays the effective date of the drawback changes for one year. The conferees also agree to request a General Accounting Office report on remote filing as outlined in the report of the Senate Committee on Finance.

D. CUSTOMS OFFICER PAY REFORM

1. Overtime and premium pay for customs officers

PRESENT LAW

Customs inspectors are compensated with overtime pay for work performed outside the statutorily-defined work week (*i.e.*, Monday through Saturday, 8:00 a.m. through 5:00 p.m.). Overtime pay is paid at a rate of two times basic pay, with any amount of work conducted during a two-hour period treated as four hours pay (two hour minimum at a rate of two times basic pay).

Customs inspectors who are required to work after their normal duty (callback), between 5:00 p.m. and 9:00 p.m., are paid overtime beginning at 5:00 p.m. and for hours actually worked, at a rate of two times basic pay. Customs inspectors who are required to work after their normal duty (callback), between 9:00 p.m. and 6:00 a.m., are paid for eight hours (four minimum hours at a rate of two times basic pay), plus hours actually worked of at least four hours (two minimum hours at a rate of two times basic pay), for a total of 12 hours pay for any time worked.

There is no separate provision in present law to compensate Customs inspectors for a second commute due to callback.

Customs inspectors are compensated with overtime pay for work performed at night and on Sundays and holidays, plus certain minimum hour credits, at a rate of two times basic pay. At night (after 5:00 p.m. and before 8:00 a.m.), Customs inspectors are compensated with four hours pay (two hours minimum at a rate of two times basic pay) for any time worked. On Sundays, Customs inspectors are compensated with 16 hours pay (eight hours minimum at a rate of two times basic pay) for any time worked. On holidays, Customs inspectors are compensated with 16 hours pay (as on a Sunday) plus basic pay for any time worked.

Customs inspectors may receive up to $25,000 in overtime pay, annually.

Customs Canine Enforcement Officers are provided overtime compensation in the same manner as other Federal employees under the Federal Employee Pay Act (FEPA).

There is no separate provision in present law authorizing the Secretary of the Treasury to promulgate overtime regulations.

HOUSE BILL

Section 201 of H.R. 3837 as passed by the House provides that Customs officers would be compensated with overtime pay for work

performed in excess of a 40-hour week or eight-hour day, at a rate of two times basic pay, for actual time worked.

Customs officers who must return to their place of work (callback) beyond their normal duty, where the work begins more than one hour after their duty ends or before their next duty begins, would be paid four hours pay (two minimum hours at a rate of two times basic pay), plus hours actually worked beyond two hours (at a rate of two times basic pay).

In addition to callback pay, Customs officers would be paid three hours (at the basic pay rate) as compensation for travel time.

Customs officers would be provided additional compensation (15 percent of basic pay) where a majority of the work is performed at night (between 3:00 p.m. and midnight) and additional compensation (20 percent of basic pay) where a majority of the work is performed at night (between 11:00 p.m. and 8:00 a.m.), where the night work is performed during their regular work week.

Customs officers would be provided additional compensation (at a rate of time and one-half basic pay) for work performed on Sunday, where the Sunday work was performed during their regular work week.

Customs officers would be provided additional compensation (at a rate of two times basic pay) for work on a holiday.

The newly created premium pay for work performed at night, Sundays, and holidays, and compensation received for any second commute would be subject to the annual overtime pay limitation.

Customs officers would be defined as any individual performing those functions specified by regulation by the Secretary of the Treasury for a Customs inspector or Canine Enforcement Officer.

The Secretary of the Treasury would be authorized to promulgate regulations to insure that callback assignments are commensurate with the overtime compensation authorized for such work and to prevent the disproportionate assignment of overtime work to Customs officers who are near retirement.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with three modifications. First, the conference agreement adds a provision prohibiting callback benefits from being paid for work done within the hour before a regular workshift begins. Second, the agreement adds a provision to ensure that commuting expenses would only be paid for second commutes within a 24-hour period. Finally, the agreement also adds a provision establishing a 7:30 p.m. to 3:30 a.m. workshift paying a 15 percent premium for the first four hours and a 20 percent premium for the second four hours.

2. Foreign language proficiency awards for customs officers

Present Law

No provision.

HOUSE BILL

Section 202 of H.R. 3837 as passed by the House authorizes the Secretary of the Treasury to pay up to five percent of basic pay to any Customs officer who possesses and makes substantial use of one or more foreign languages in the performance of official duties.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

3. Appropriations reimbursements from the Customs user fee account

PRESENT LAW

User fees (COBRA fees) are authorized to be collected on various conveyances and air passengers and are paid into a dedicated Customs User Fee Account. The fees are used to pay the costs of inspectional overtime, preclearance operations, additional officers, and equipment. The Customs COBRA user fee account is not subject to annual authorization and appropriation. Spending for inspectional overtime and preclearance operations is not subject to Office of Management and Budget apportionment authority.

HOUSE BILL

Section 203 of H.R. 3837 as passed by the House authorizes the Secretary of the Treasury to use the Customs COBRA User Fee Account, in addition to present law purposes, for Customs officer premium pay and agency retirement-fund contributions for Customs officer overtime pay. The Customs COBRA User Fee Account would continue to be available without the annual authorization and appropriation process. However, it would be subject to Office of Management and Budget apportionment.

SENATE BILL

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

4. Treatment of certain pay of Customs officers for retirement purposes

PRESENT LAW

Customs inspector overtime pay is not treated as compensation for Federal retirement benefit purposes when calculating employee retirement annuities. The Customs inspector overtime pay cap is currently set at $25,000.

HOUSE BILL

Section 204 of H.R. 3837 as passed by the House provides that overtime pay would be included when calculating retirement annuities for Customs officers, up to an amount equal to 50 percent of the overtime pay cap. Fifty percent of the current overtime pay cap is currently $12,500.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

5. Reports

PRESENT LAW

The Secretary of the Treasury is required annually to report to the Congress on expenditures for additional officers and additional equipment from the Customs COBRA User Fee Account.

HOUSE BILL

Section 205 of H.R. 3837 as passed by the House requires the Secretary of the Treasury, at the end of each fiscal year, to report to the Congress on all Customs COBRA User Fee Account expenditures including overtime expenditures, *de minimis* callback assignments, and any proposals for improvements to the user fee laws used to finance inspectional services. The Comptroller General would be required, within one year after date of enactment, to review user fees used to finance inspectional services, and identify cost savings.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, but adds an additional reporting requirement. To monitor occasions when Customs inspectors are paid more than the current law annual pay cap, the Secretary of the Treasury will be required to list those inspectors who receive more than $25,000 in a year and the total compensation paid to each.

E. MISCELLANEOUS TRADE PROVISIONS

1. Review of the compliance by foreign countries with bilateral trade agreements

PRESENT LAW

No provision.

HOUSE BILL

Section 102 of H.R. 5100 adds a new section to the Trade Act of 1974 to establish a procedure whereby an interested person may request the Office of the USTR to undertake a review to determine whether a foreign government is in "material compliance" with the terms of a bilateral trade agreement, except the U.S.-Canada and U.S.-Israel Free Trade Agreements. Requests for reviews may be made only during the 30-day period beginning on each anniversary of the effective date of the agreement and during the 30-day period ending 90 days before the agreement terminates if that period begins at least 180 days after the last annual 30-day request period.

A review is mandatory if the request meets certain requirements enumerated in the section. Within 90 days after the last day of the request period, USTR must determine whether the foreign country is in material compliance with the terms of the trade agreement. The section identifies certain factors that USTR must take into account in making its determination. If USTR determines that a foreign country is not in material compliance, USTR shall determine what action to take under section 301(a) of the Trade Act of 1974, as amended.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill. The conferees intend that the review procedures established in this section be available only to U.S. persons with significant economic interests that are or have been adversely affected by a foreign country's material non-compliance with a bilateral trade agreement.

2. Caribbean basin initiative (CBI) treatment of footwear and leather-related products

PRESENT LAW

U.S. Note 2 of Subchapter II of Chapter 98 of the HTSUS provides that articles imported from beneficiary countries under the Caribbean Basin Economic Recovery Act made wholly of U.S.-origin materials or components (except for textile and apparel articles, petroleum, and petroleum products) shall not be subject to duty.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment adds footwear and leather-related products to the list of products excluded from duty-free treatment under the Note.

Effective date.—The provision is retroactive to October 1, 1990.

CONFERENCE AGREEMENT

The House recedes with an amendment in the nature of a substitute that removes duty-free treatment under U.S. Note 2 to subchapter II of chapter 98 of the HTSUS for imports of footwear from Caribbean Basin beneficiary countries. After the date of enactment, duty-free treatment for such articles under such Note shall be provided annually for exports by facilities which have established production for exportation to the United States under such Note prior to October 1, 1992, up to the amount of existing production as of October 1, 1992, and on an annualized basis period. Such limitations shall be based on the HTSUS subheadings.

In the case of production of footwear classifiable under HTSUS subheadings 6404.1150, 6404.1160, 6404.1940, and 6404.1960 and leather footwear with synthetic soles for women classifiable under the appropriate subheadings of HTSUS heading 6403, duty-free treatment shall be provided based on established production capacity as of October 1, 1992, and production capacity for facilities under construction as of October 1, 1992.

The International Trade Commission shall make the necessary determinations described above to carry out this provision and provide such information to the U.S. Customs Service as the basis for determining imports of footwear that will qualify for duty-free treatment under this Note. The Customs Service shall prescribe regulations for the collection of whatever information is necessary to administer duty-free treatment under this provision.

In determining the established production capacity and the production capacity for facilities under construction, the International Trade Commission shall require the facilities to provide documentation to demonstrate the established production capacity and the production capacity for facilities under construction. The term "facility under construction" means that substantial work has been undertaken on the facility. The International Trade Commission shall use standards based on U.S. facilities in determining the amount of production capacity and the International Trade Commission's determination of productive capacity shall be reasonably based on the documentation provided and typical U.S. facilities.

3. Special rule regarding circumvention of certain antidumping orders

PRESENT LAW

The Trade Act of 1988 expanded antidumping and countervailing duty law to authorize the Department of Commerce to take action to address attempts to circumvent outstanding orders through U.S. or third country assembly operations using parts imported from the country subject to the original order.

HOUSE BILL

No provision.

Senate Amendment

The Senate amendment provides a special rule for considering whether antidumping duty orders issued against imports of portable electric typewriters and word processors from Japan are being circumvented. Under the special rule, the Commerce Department would be given the authority to expand the current orders to address the circumvention that has occurred with respect to these orders, if certain conditions are met.

Conference Agreement

The conference agreement does not include the Senate amendment provision. The conferees regret that this issue could not be resolved in this conference. The possible evasion of antidumping and countervailing duty orders remains one of great importance to all of those who are concerned about the effective enforcement of our unfair trade laws. At the same time, this is a complex issue that potentially affects large amounts of trade, millions of dollars worth of investment and the jobs of thousands of U.S. workers. While the conferees believe that U.S. law could be improved to safeguard against the evasion of antidumping and countervailing duty orders, it is necessary to ensure that any legislation that is enacted is properly crafted to reflect the legitimate interests of all of those who could be affected by such legislation. Unfortunately, this has not been possible in this conference, but the conferees expect to take it up in the future. Given the importance of the issue, the conferees intend to continue careful monitoring of the Administration's efforts to secure effective international rules in the Uruguay Round on this matter. At this point, the conferees are not persuaded that the proposals in the draft Uruguay Round text accomplish this objective.

CONTENTS

IX. INCOME SECURITY AND HUMAN RESOURCES PROVISIONS

Foster Care and Income Security (Subtitle C of Title I)

Part I—Child Welfare; Foster Care; Substance Abuse Treatment and Services

A. Child Welfare Services

Page

1. Entitled Funding for Services Designed to Strengthen and Preserve Families and for Substance Abuse Prevention and Treatment Programs (sec. 101 of House bill and sec. 7101 and 7121 of Senate amendment) 1219
a. In General 1219
b. Allotments to States; Federal/State Matching Share 1221
c. Family Preservation and Family Support Services 1221
d. Substance Abuse Prevention and Treatment 1224
e. Respite Care (sec. 480 of House bill and sec. 7101 of Senate amendment) 1225
f. Enhancing Court Procedures (sec. 104 of House bill) 1226
g. State Plan Requirement 1227
2. State Directory of Services (sec. 105 of House bill) 1228
3. Required Protections for Foster Children (sec. 102 of House bill) 1229
4. State Plan Requirement Regarding the Indian Child Welfare Act (sec. 106 of House bill) 1230

5. Reports on Child Welfare Service and Expenditures (sec. 103 of House bill and sec. 7101 of Senate amendment) 1231

B. Foster Care and Adoption Assistance and Related Provisions

1. Comprehensive Services/Flexible Spending (sec. 201 of House bill and sec. 7102 and 7112 of Senate amendment) 1232
2. Changes to Eligibility Requirements under Title IV-E 1235
a. Abandoned Children (sec. 202 of House bill) 1236
b. Clarification of "Removal from Home" Requirement (sec. 203 of House bill) 1236
c. Dissolved Adoptions (sec. 204 of House bill and section 7103(b) of Senate amendment) 1237
d. Extension of Definition of Special Needs Child (sec. 206 of House bill 1238
e. Time Frame for Judicial Determination on Voluntary Placements (sec. 212 of House bill) 1239
3. Study of Reasonable Efforts Requirement by Advisory Committee (sec. 207 of House bill and sec. 7105 of Senate amendment) 1240
4. Tax Deduction for Costs of Adopting a Child with Special Needs (sec. 7104 of Senate amendment) 1241
5. Periodic Review of Foster Care Maintenance Payments (sec. 209 of House bill) 1241
6. Amendments to Case Review System and Case Plan Requirements 1242
a. Accelerated Dispositional Hearing (sec. 210 of House bill) 1243
b. Periodic Review of Children Free for Adoption (sec. 211 of House bill and section 7103(a) of Senate amendment) 1243
c. "Most Appropriate Setting" Requirement (sec. 7106(a) of Senate amendment) 1244
d. Citizen Review Volunteers (sec. 7106(b) of Senate amendment) 1244
e. Health Care Plans for Foster Children (sec. 7111 of Senate amendment) 1245
7. Placement Accountability (sec. 213 of House bill) 1245
8. Independent Living Amendments 1246
a. Treatment of Assets of Youth Participating in Independent Living Program (sec. 214 of House bill and sec. 7109(a) of Senate amendment) 1246
b. Extension of Independent Living Program (sec. 7101 of H.R. 11 as passed by the House sec. 7109 of Senate amendment) 1247
c. Optional Lowering of Age of Eligibility (sec. 7101 of H.R. 11 as passed by the House) 1247
d. Demonstration of Independent Living Services for Young Adults (sec. 7127 of H.R. 11 as passed by the House) 1248
9. Elimination of Foster Care Ceilings and Transfer Authority (sec. 215 of House bill) 1248
10. Training Activities 1249
a. Regulations for Training of Agency Staff and Foster and Adoptive Parents (sec. 216 of House bill and sec. 7110(b) of Senate amendment). 1249
b. Matching Funds for Foster and Adoptive Parent Training (sec. 7102 of H.R. 11 as passed by the House and sec. 7110(c) of Senate amendment) 1250
c. Child Welfare Traineeships (sec. 7110(a) of Senate amendment) 1250
11. Publication of Program Data (sec. 217 of House bill) 1251
12. Review of Child Welfare Activities 1252
a. New Review System (sec. 218 of House bill and sec. 7115 and 7116 of Senate amendment) 1252
b. Moratorium on Collections (sec. 7103 of H.R. 11 as passed by the House and sec. 7114 of Senate amendment) 1256

C. Information and Management System

D. Research, Demonstration, and Evaluation Activities

1. Advisory Commission on Children and Families (sec. 401 of House bill) 1259
2. Children Welfare/Foster Care Research and Evaluations (sec. 402 of House bill and sec. 7101 of Senate amendment) 1260
a. Evaluations of Child Welfare/Foster Care Services 1260
b. Evaluations of Alternative Foster Care Arrangements 1261
c. Longitudinal Child Welfare Data Bases; Studies of the Dynamics of the Child Welfare Population 1262

d. Child Separation Guidelines Study 1263
3. Other Research and Evaluations (sec. 403 of House bill) 1263
a. Study of Risks to Foster Care Workers 1263
b. National Workload Study 1264
c. Evaluation of Foster Parent Recruitment, Training and Retention Efforts 1264
4. Child Welfare Demonstrations 1265
5. Technical Assistance (sec. 405 of House bill) 1269

E. SOCIAL SERVICES BLOCK GRANT

F. COMMISSION OF CHILDHOOD DISABILITY

IX. INCOME SECURITY AND HUMAN RESOURCES PROVISIONS

FOSTER CARE AND INCOME SECURITY (SUBTITLE C OF TITLE I)

PART I—CHILD WELFARE; FOSTER CARE; SUBSTANCE ABUSE TREATMENT AND SERVICES

A. CHILD WELFARE SERVICES*

1. Child welfare services designed to strengthen and preserve families and for substance abuse prevention and treatment

(Section 101 of House bill and sections 7101 and 7121 of Senate amendment)

a. In general

PRESENT LAW

The child welfare services program under title IV–B of the Social Security Act authorizes 75 percent Federal matching grants to States for child welfare services. The authorization level for the title IV–B program is $325 million per fiscal year. Funds are distributed to the States and outlying areas on the basis of their under-age-21 population and per capita income. For fiscal year 1992, appropriations total $274 million. States have discretion to determine the nature of the child welfare services they wish to provide, and the population to which they will be provided.

HOUSE BILL

Title IV–B is amended to provide entitlement matching funds to the States for family preservation services and services related to substance abuse, in addition to the existing authorization for child welfare services under title IV–B. States will be entitled to their share of $200 million in fiscal year 1993; $350 million in fiscal year 1994; $450 million in fiscal year 1995; $550 million in fiscal year 1996; and $600 million in fiscal year 1997. The funding level in subsequent fiscal years equals the fiscal year 1997 ceiling, adjusted annually for inflation based on changes in the consumer price index for all urban consumers for the most recent 12-month period for which data are available. The funding level is adjusted

*Unless otherwise noted, House bill refers to H.R. 3603, as passed by the House, and Senate amendment to H.R. 11.

upward for each of fiscal years 1993 through 1999 by transferring 60 percent of the amount (if positive) by which Federal outlays for the fiscal year under title IV–E are less than the title IV–E projections in the CBO baseline as of March 1992, as amended by this Act. The title IV–E projections for 1998 and 1999 will be obtained by inflating the CBO projections for 1997 by increases (if any) in the GDP deflator. These additional amounts may be used for any purpose under title IV–B and will not be subject to a non-Federal match. They will be allocated to States according to the same formula used to allocate basic entitlement amounts, described below. Funding for respite care is available as an open-ended entitlement under title IV–E (see item e.).

Effective date.—October 1, 1992.

SENATE AMENDMENT

Title IV–B is amended to provide entitlement matching funds to the States for child and family services, in addition to the existing authorization for child welfare services under title IV–B. States will be entitled to their share of $150 million in fiscal year 1993; $250 million in fiscal year 1994; $300 million in fiscal year 1995; $350 million in fiscal year 1996, and $400 million in fiscal year 1997 and years thereafter. Entitlement matching funds also are provided for services related to substance abuse ($75 million for each of fiscal years 1993 and 1994, $100 million for each of fiscal years 1995 and 1996, and $125 million for fiscal year 1997) (see item d.).

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The title IV–B child welfare services program is amended to provide entitlement matching funds to the States for innovative family preservation and family support services, substance abuse prevention and treatment, and respite care services. The overall entitlement ceiling will equal $135 million for fiscal year 1993, $355 million for fiscal year 1994, $485 million for fiscal year 1995, $520 million for fiscal year 1996, and $595 million for fiscal year 1997. The entitlement ceiling will be adjusted annually for inflation in subsequent fiscal years.

The amount available for family preservation and family support services will equal $95 million for fiscal year 1993; $235 million for fiscal year 1994; $320 million for fiscal year 1995; $340 million for fiscal year 1996; and $385 million for fiscal year 1997.

The amount available for substance abuse prevention and treatment will equal $40 million for fiscal year 1993; $90 million for fiscal year 1994; $110 million for fiscal year 1995; $115 million for fiscal year 1996; and $125 million for fiscal year 1997.

The amount available for respite care will equal $30 million for fiscal year 1994; $55 million for fiscal year 1995; $65 million for fiscal year 1996; and $85 million for fiscal year 1997. A State may transfer up to 50 percent of its share of the fiscal year 1994 entitlement funds for respite care services, and up to 25 percent of the fiscal year 1995 entitlement funds, to family preservation and

family support services or substance abuse prevention and treatment.

Effective date.—October 1, 1992.

b. Allotments to States; Federal/State matching share

HOUSE BILL

The allotment of entitlement funds to Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands and American Samoa is on the same basis as under the existing title IV-B child welfare services authorization. Remaining funds are distributed to States according to an allocation formula, based on the average number of children in the State receiving food stamp benefits for the fourth, third and second preceding fiscal years, as determined from sample surveys under the food stamp program quality control system. The Federal matching share will equal 75 percent.

Any portion of a State allotment which the State certifies will not be used will be available for reallotment to other States which can use the funds during the fiscal year. Any reallotted funds will be distributed to States according to the same entitlement formula described above.

Effective date.—October 1, 1992.

SENATE AMENDMENT

The allotment of funds is on the same basis as under the current title IV-B program (which reflects the size of the State's population under age 21 and per capita.)

The Federal matching share will equal 75 percent.

Funds to which a State is entitled for a fiscal year will remain available for that fiscal year and the succeeding fiscal year.

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with regard to the allotment formula for the entitlement funds for family preservation and family support services, and for substance abuse prevention and treatment. Entitlement funds for respite care services will be allotted to each State based on its relative share of children receiving Federally-supported foster care maintenance payments. The Federal matching share for all of the entitlement funds is 75 percent. Funds will remain available for a two-year period, and unused funds will be reallotted at the end of the two-year period.

Effective date.—October 1, 1992.

c. Innovative family preservation and family support services

HOUSE BILL

States may use funds under the new title IV-B entitlement for developing and expanding the following services:

(1) specialized child welfare service programs for families in crisis due to substance abuse, that emphasize comprehensive services, are geared toward the whole family, and encourage or expand the availability of programs for pregnant women and

programs which allow mothers to reside with their children (and other caretaker relatives to reside with the children in their care) while receiving services or treatment; and

(2)(i) service programs designed to help children, where appropriate, return to families (including adoptive families) from which they have been removed or be placed for adoption, with legal guardians, or, where appropriate with respect to a child, in some other planned, permanent living arrangement,

(ii) preplacement preventive services programs, such as intensive family preservation programs that are designed to help children at risk of foster care placement remain with their families (including adoptive families), or

(iii) service programs designed to provide follow-up care to families (including adoptive families) to whom a child has been returned following a foster care placement.

Allotments to a State will be reduced to the extent that: (1) such State used any entitlement funds to supplant other Federal, State or local funds used for similar purposes; (2) expenditures by such State and its political subdivisions from State and local sources for child welfare services (excluding foster care maintenance payments and adoption assistance payments) in any fiscal year are less than such expenditures for fiscal year 1992; and (3) expenditures by such State and its political subdivisions from State and local sources for child welfare services in any fiscal year are less than such expenditures for fiscal year 1992.

For a 5-year period beginning fiscal year 1994, a portion of the entitlement funds is earmarked for a program to make grants to the highest State courts to assess court foster care procedures and to implement improvements. (See item f. below.)

Effective date.—October 1, 1992.

SENATE AMENDMENT

States may use funds under the new title IV–B entitlement for the planning, development, expansion and operation of the following services:

(1) preplacement preventive services designed to help children at risk of foster care placement remain with their families (including adoptive families), where appropriate;

(2) reunification services designed to help children return to the families (including adoptive families) from which they have been removed, where appropriate;

(3) follow-up services designed to sustain and further strengthen families (including adoptive families) after a child has returned home from foster care placement;

(4) where appropriate, services designed to help children be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

(5) respite care to provide assistance for any foster care family, adoptive family or any other family that the State agency determines needs such care in order to preserve family stability, with priority to the family of a child with a physical,

mental, or emotional condition that requires special assistance (as determined by the Secretary); and

(6) family support services to strengthen the functioning of a family (including an adoptive or foster care family), including services designed to improve parenting skills.

As a condition of receiving funds under this program, States must provide the Secretary with written assurance that State and local funds expended for the purpose of providing child welfare services (excluding foster care maintenance and adoption assistance payments) will be maintained at a level that equals or exceeds the level of funding for these services in fiscal year 1991.

In addition, a separate entitlement to States is created for services related to substance abuse. (See item d. below.)

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

Under the conference agreement, a portion of title IV–B entitlement funds may be used for the planning, development, expansion and operation of the following family preservation and family support services:

(1) service programs designed to help children, where appropriate, return to families (including adoptive families) from which they have been removed or be placed for adoption, with legal guardians, or, where appropriate with respect to a child, in some other planned, permanent living arrangement;

(2) preplacement preventive services programs (for example, intensive family preservation programs) that are designed to help children at risk of foster care placement remain with their families (including adoptive families);

(3) service programs designed to provide follow-up care to families (including adoptive families) to whom a child has been returned following a foster care placement; and

(4) family support services to strengthen the functioning of a family (including an adoptive or foster care family), including services designed to improve parenting skills, respite care, and adult mentoring.

For a four-year period, a portion of the entitlement for family preservation and family support services may be used for grants to the highest States courts (see item f.).

With regard to maintenance of effort for family preservation and family support services, the conference agreement follows the House bill, except that the third item, with respect to expenditures by State and political subdivisions for child welfare services, is deleted.

The conferees intend that each State have the discretion to determine the most appropriate allocation of its share of the entitlement funds among these categories of service programs.

The conference agreement also designated funds under title IV–B for: (1) substance abuse prevention and treatment (see item d.); and (2) respite care services for foster parents caring for children with special needs (see item e.).

Effective date.—October 1, 1992.

d. Substance abuse prevention and treatment

HOUSE BILL

Under the new services entitlement, States must use a portion of their allotments for specialized services for families in crisis due to substance abuse.

Effective date.—October 1, 1992.

SENATE AMENDMENT

Title IV-B is amended to authorize entitlement matching funds to the States to enable them to plan, develop, and operate a qualified comprehensive substance abuse treatment program, and to provide nonmedical substance abuse treatment support services for low-income pregnant women and caretaker parents with children under such program.

Amounts to which a State is entitled in any fiscal year will remain available for such fiscal year and the succeeding fiscal year.

Funds are allocated to States under the same formula that is used for other title IV-B services (which reflects per capita income and child population). Federal matching is at the Medicaid rate. The Governor may designate which agency or agencies in the State will administer a program.

Medicaid-eligible pregnant women and caretaker parents and, where appropriate, their children will be eligible for services. The State may also use these funds to pay for services to other low-income pregnant women and caretaker parents and their children, regardless of their eligibility for Medicaid. States are required to give priority for participation in these programs to individuals who are referred to them by the State child welfare agency.

States must coordinate services provided with these funds with services provided under the Medicaid and Maternal and Child Health programs, and must report on the programs funded under this legislation (at such time and in whatever form determined appropriate by the Secretary) information that the Secretary and Congress need in order to evaluate the operation and effectiveness of program services. The information must include the number of individuals participating in the program, limits on enrollment, and the number of individuals on a waiting list to participate.

As a condition of receiving payment, a State must provide assurances to the Secretary that the total amount of funds expended by the State (and any political subdivision) from non-Federal sources for the fiscal year for the purpose of providing nonmedical substance abuse treatment support services will not be less than the total amount expended for such services from such sources for the immediately preceding fiscal year.

The term "qualified comprehensive substance abuse treatment program" means a program that makes available (either directly or through arrangements with others) substance abuse prevention, treatment, and follow-up services; prenatal, gynecological, and pediatric medical services; transportation and nonmedical substance abuse treatment support services. The term "nonmedical substance abuse treatment support services" is defined to include home visitation services, nutrition services, child care, and parenting educa-

tion; substance abuse prevention, treatment, and follow-up services (to the extent such services are not furnished under a State plan approved under title XIX); and any other services (such as room and board at a residential substance abuse treatment facility for a parent or a child) that are determined by the State (in accordance with regulations issued by the Secretary) to be necessary and appropriate. Services may be provided in either residential or nonresidential facilities.

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment. The Federal matching rate is 75 percent. Funds will be allotted to each State based on the average number of children in the State receiving food stamp benefits.

Effective date.—October 1, 1992.

e. Respite care

(Section 480 of House bill and section 7101 of Senate amendment)

PRESENT LAW

Federal reimbursement for respite care to foster parents is not available under the title IV–E foster care maintenance payments program. There is no specific authorization under title IV–B for respite care services, although States have the discretion to use title IV–B funds for such services.

HOUSE BILL

States may provide respite care under title IV–E to provide temporary relief to the foster parents of foster children with special needs (whether or not such children are eligible for the title IV–E program).

To receive Federal reimbursement for the cost of respite care, the State plan must include provision for such care to any family which operates a foster family home for 1 or more foster children who the State determines have special needs. Respite care must meet all applicable State or local standards and guidelines, and must be provided in the least restrictive setting consistent with the child's special needs. The care must be authorized by a State or provided by a public or private agency designated by a State. Expenditures for title IV–E respite care will be reimbursable at the same matching rate as foster care maintenance payments. Federal reimbursement will be limited to no more than 14 days of respite care in a 12-month period per foster child. A "day" means 24-hours. Expenditures relating to administration will be reimbursed at the rate of 50 percent.

Effective date.—October 1, 1993.

SENATE AMENDMENT

Under the new innovative services entitlement described above, the following would be an allowable use of funds: respite

care to provide assistance for any foster care family, adoptive family, or any other family that the State agency determines needs such care in order to preserve family stability, with priority to the family of a child with a physical, mental, or emotional condition that requires special assistance, as determined by the Secretary. (see item c.)

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

Under the conference agreement, a portion of title IV–B entitlement funds is designated for respite care to provide temporary relief to the foster parents of foster children with special needs. Respite care must meet all applicable State or local standards and guidelines, and must be provided in the least restrictive setting consistent with the child's special needs. Respite care funds will be allotted to each State based on its share of the number of children receiving title IV–E foster care maintenance payments (based on the latest available three-year average). The Federal matching rate for the funds is 75 percent.

Effective date.—October 1, 1993.

f. Enhancing court procedures

(Section 104 of House bill)

PRESENT LAW

No provision.

HOUSE BILL

For 5 fiscal years, a freestanding grant to the highest State courts is authorized to conduct an assessment of current court procedures and functions related to parts B and E of title IV and to implement recommendations for improvements based upon such an assessment. The grant will be funded through an earmark of title IV–B entitlement funds.

In fiscal year 1994, the earmark will total $15 million; for each of fiscal years 1995 through 1998, the earmark will equal $25 million. Funds under the earmark will be allotted to the States based on the proportion of their population under the age of 21, but a minimum of $150,000 will be made available to each State during the first year of the grant, and a minimum of $190,000 will be made available to each State during each of the subsequent 4 years.

No State match is required for the first and second year grant funds; and State match of 25 percent is required for fiscal year 1996 through 1998 grant funds.

The Secretary is required to make an interim and final report to Congress on the information obtained from the State assessments and on the impact of the grant program on the procedures and functions of the State courts in carrying out titles IV–B and IV–E. The reports are due at the end of fiscal years 1996 and 1999.

Effective date.—October 1, 1993.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, modified to: (1) authorize grants for four, instead of five, years; (2) require a State match in the second, as well as third and fourth, years of the grant; (3) earmark $15 million for fiscal year 1994, and $20 million for each of fiscal years 1995 through 1997 (the minimum State allotment for fiscal years 1995 through 1997 will equal $170,000); and (4) require only a final report from the Secretary.

Effective date.—Date of enactment.

g. State plan requirement

HOUSE BILL

To be eligible to receive its share of entitlement funds for a fiscal year, each State must annually submit to the Secretary, as an amendment to its title IV–B State plan and in such form as the Secretary may require by regulation, a comprehensive family services plan, which must contain:

(1) an assessment of the service needs of families in which any child is at risk of being, or has been, placed outside the home, and the need for substance abuse treatment services for such families:

(2) a description of the service programs available in the State that address the service needs of such families;

(3) the State's 5-year goals for increasing the number and capacity of such service programs;

(4) a strategy for the fiscal year to improve the coordination of services to such families with other State programs and services;

(5) a certification from the Governor that the State has provided for appropriate coordination of State substance abuse treatment programs and the service programs under title IV–B;

(6) an assurance that the State will not use funds under title IV–B to supplant Federal, State or local funds used for similar purposes;

(7) an explanation of how Federal assistance under the entitlement will expand services available to such families, including a description of service programs to be provided with funds under the entitlement, the goals of the programs, and the populations to which the programs will be targeted, with an assurance that such populations will consist of families with children who are in, have been in, or are at risk of being placed in, foster care, and, at the option of the State, the care of a mental health or juvenile justice agency; and

(8) such other information as the Secretary may require by regulation.

Effective date.—October 1, 1993.

Senate Amendment

In order to receive funding for services, each State must submit, on an annual basis, an amendment to its title IV–B plan. The amendment must be submitted by January 1, 1993 for fiscal year 1993, and by July 1 preceding each fiscal year thereafter. The plan amendment must be approved by the Secretary, and must include a detailed description of services the State intends to provide.

The State must also develop a statement of goals that it expects to achieve over the 5 year period 1993–1997, which must be submitted to the Secretary by January 1, 1993.

Effective date.—Date of enactment; applies beginning for fiscal year 1993.

Conference Agreement

Under the conference agreement, the requirement for an annual State plan amendment applies only to the entitlement funds for family preservation and family support services. The conference agreement generally follows the Senate amendment, but also provides that the annual plan amendment will include items d, f, g, and h from the House bill, with respect to a coordination strategy, supplantation of funds, an explanation of how additional funds will expand services, and such other information as the Secretary may require. Item g from the House bill is modified to clarify that States are not required to target services to each of the described populations. The amendment for fiscal year 1993 is due not later than such date as the Secretary may require. The conference agreement established no due date for the report on goals.

Effective date.—October 1, 1992.

2. State directory of services

(Section 105 of House bill)

Present Law

No provision.

House Bill

Title IV–B is amended to include a State plan requirement that the State child welfare agency compile, at least every two years, a directory of certain specified service programs that are made available by the State agency or local child welfare agencies. The service programs in the directory must include:

(a) preplacement preventive services programs that are designed to help children at risk of foster care placement remain with their families;

(b) service programs designed to help children, when appropriate, return to families from which they have been removed or be placed for adoption, with legal guardians, or in some other planned, permanent living arrangement; and

(c) service programs designed to provide follow-up care to families to whom a child has returned following a foster care placement.

The directory must specify which of the service programs provide specialized child welfare services to families in crisis due to substance abuse. The directory must also contain such information as the Secretary may require by rule.

At a minimum, the directory must include the following information: the name and address of the program and administering agency or organization; a description of program services: program capacity; and a description of the eligibility criteria for the program, including any priorities regarding who will receive program services.

The information in the report must be arranged geographically. The State must provide a copy of the directory to the Secretary and to all judges and other judicial administrators, and all State agencies, involved in child protection, foster care and adoption cases.

Effective date.—October 1, 1993.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill. The conferees intend that the State may implement this provision by directing the local child welfare agencies to collect the information for their geographic area and submit it to the State child welfare agency for inclusion in the directory. The conferees encourage States to include in the directory services made available by private, nonprofit agencies and other organizations providing services to children and families.

Effective date.—October 1, 1993.

3. Required protections for foster children

(Section 102 of House bill)

PRESENT LAW

Under current law, in order to receive its full share of the title IV–B allocation, each State is required under section 427(a) to conduct an inventory of children in foster care; and to implement and operate, to the satisfaction of the Secretary, a tracking system for children in foster care, a case review system for children in foster care, and a service program designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship.

Currently, all States have chosen to be reviewed for compliance with these requirements and are eligible to receive title IV–B incentive funds.

Further, under section 427(b), if the appropriations for the title IV–B program equal $325 million for two consecutive years, a State does not receive its full title IV–B allotment unless it has met all the section 427 requirements outlined above, and in addition, has implemented a preplacement preventive services program designed

to help children remain with their families. This additional incentive mechanism has never been triggered.

States that have elected to provide Federally-supplemented foster care payments for voluntarily-placed foster children are required to implement all section 427 protections, including the preplacement preventive services program. In fiscal year 1989, 22 States claimed Federal matching for children in foster care under voluntary placement agreements, and 50 States reported they were eligible to claim such matching.

HOUSE BILL

Beginning for fiscal year 1993, section 427 is repealed. Instead, each State plan for the title IV-B program must provide for the foster care protections currently outlined in section 427(a), including: an inventory of children in foster care; a tracking system for children in foster care; a case review system for children in foster care; and a service program designed to help children in foster care return to their families.

Beginning for fiscal year 1995, States also must:

(a) implement a preplacement preventive services program designed to help children at risk of foster care placement remain with their families; and

(b) review State laws, State administrative and judicial procedures, and agency legal representation in effect for children abandoned at or shortly after birth, and develop and implement such laws and procedures as the State determines are necessary to enable lasting permanent decisions to be made more expeditiously with respect to the placement of such children.

These amendments must not be construed to permit any State to interrupt the provision of the foster care protections described in section 427 (as in effect before fiscal year 1993).

Effective date.—October 1, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that the entire provision will apply beginning for fiscal year 1995.

Effective date.—October 1, 1994.

4. State plan requirement regarding the Indian Child Welfare Act (Section 106 of House bill)

PRESENT LAW

The Indian Child Welfare Act (P.L. 95-608) includes a number of State requirements relating to the foster care or adoptive placement, or termination of parental rights, of Indian children. There is currently no statutory link between the Indian Child Welfare Act and the child welfare services programs under the Social Security Act.

HOUSE BILL

The State plan for title IV-B must contain a description, developed after consultation with Indian tribes or tribal organizations within the State, of the specific measures taken by the State to comply with the requirements of the Indian Child Welfare Act.

Effective date.—October 1, 1993.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

Effective date.—October 1, 1993.

5. Reports on child welfare services and expenditures

(Section 103 of the House bill and section 7101 of Senate amendment)

PRESENT LAW

The State plan for the title IV-B program must contain a description of the services to be provided and specify the geographic areas where such services will be available.

HOUSE BILL

States wishing to participate in the new services entitlement must submit to the Secretary, as a title IV-B plan amendment, a comprehensive family services plan.

Beginning for fiscal year 1994, the State plan for the title IV-B program must include a pre-expenditure report on the intended use of payments, including information on the types of services to be provided and the geographic areas where the services will be available, which must be made public in a manner to facilitate public comment by any person during its development.

Beginning for fiscal year 1994, the bill requires that each State prepare an annual report on actual expenditures for services under title IV-B. The report must be in such form and contain such information as the State finds necessary to: provide an accurate description of services; secure a complete record of the purposes for which the funds were spent; and enable a determination of the extent to which funds were spent in a manner consistent with the pre-expenditure report. The report must be transmitted to the Secretary, available for public comment, and provided, upon request, to any interested public agency.

The Secretary must establish uniform definitions of services for use by the States in preparing the report, and must establish a date by which States must submit the report.

A State plan requirement is added to title IV-B that States provide information for the second preceding fiscal year on aggregate expenditures by the State and its political subdivisions for child welfare services, broken down to show the extent to which the expenditures were from funds provided by Federal, State or

local sources. This amendment will apply to State plans beginning for fiscal year 1993. The Secretary must transmit a summary of this information to the House Committee on Ways and Means and the Senate Committee on Finance, and make the summary available to the public at a charge equal to the cost of printing.

Effective date.—October 1, 1993.

SENATE AMENDMENT

States wishing to participate in the new innovative services entitlement must submit to the Secretary a title IV–B plan amendment describing services the State intends to provide with its new entitlement allotment.

No later than January 1, 1994, and annually thereafter, each State must submit to the Secretary a report that summarizes activities actually carried out with new funds made available under this legislation. Such reports will cover the most recently completed fiscal year, and be in such form and contain such information as the Secretary requires by regulation.

In addition, as described in item A.1.d., each State must report information to the Secretary on comprehensive substance abuse treatment programs funded under title IV–B that is needed to evaluate the operation and effectiveness of program services.

Effective date.—January 1, 1994.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with modifications. The proposed requirement for a pre-expenditure report is deleted, and State title IV–B plans must continue to contain a description of services to be provided. The post-expenditure reports will apply to all expenditures under title IV–B but expenditures relating to substance abuse prevention and treatment. The requirement that the Secretary establish uniform definitions of services is amended to make such requirement to the extent feasible. The conference agreement further provides that the requirement that State plans include information on aggregate expenditures will apply beginning for fiscal year 1994, instead of fiscal year 1993.

Effective date.—Date of enactment with respect to expenditures under title IV–B in or after fiscal year 1994. October 1, 1993.

B. FOSTER CARE AND ADOPTION ASSISTANCE AND RELATED PROVISIONS

1. Comprehensive services/flexible spending

(Section 201 of House bill and sections 7102 and 7112 of Senate amendment)

PRESENT LAW

No provision.

HOUSE BILL

A new part C is added to title IV of the Social Security Act. Under title IV–C, States may participate in a comprehensive serv-

ice project, under which States may develop comprehensive and coordinated services designed to: preserve and strengthen families children at risk of placement outside their home, reunite children more expeditiously if an out-of-home placement is found to be necessary, or place children in adoptive homes or other permanent arrangements in a timely fashion if reunification is not appropriate.

Under the project, funds for the existing Federal child welfare and foster care programs may be combined and the States may be granted authority to modify certain requirements of title IV–B or IV–E.

The amount of a grant for a fiscal year to a State participating in a project will be equal to the sum of: 110 percent of the amount of the State title IV–B allotments (but not including additional allotments available to the State as a result of outlays being lower than the CBO baseline) for the fiscal year; and the amount the State would have properly claimed for reimbursement under the title IV–E foster care program for the fiscal year (including expenditures relating to maintenance payments, child placement services, administration, training, and the independent living program).

The Secretary will estimate the State's title IV–E foster care program claims for a fiscal year by: determining the amount paid the State for the fiscal year immediately preceding the fiscal year the State commenced the project; adjusting the amount at an annual rate which reflects the average annual rate of growth in expenditures by the State on behalf of foster children under title IV–E for the 3-year period prior to the commencement of the project; and increasing the amount, to the extent the Secretary deems appropriate, by taking into account the State's estimates of such claims, the projected rate of inflation for the fiscal year, the rate at which foster care expenses in other States have increased, changes in State laws or procedures that would change the rate at which children are placed into foster care, and the amount (if any) by which the national average foster care placement rate exceeds the State's foster care placement rate.

To the extent a State chooses not to operate the project statewide, the grant amount will be adjusted downward based on the relative number of children in foster care in the area of the State in which the project is to be conducted.

Effective date.—October 1, 1993.

SENATE AMENDMENT

(a) Demonstration to Improve Coordination of Services.—The Secretary will be required to permit up to 15 States to use Federal title IV–E foster care administrative (entitlement) matching funds (not to exceed $3 million per year for any one State) to conduct pilot projects to improve the coordination of services for families and children. Applications for approval of projects must be submitted by the Governor. Projects may last up to 3 years.

Applications must include a description of the measures to be employed to improve coordination of the child welfare, foster care, and adoption assistance programs with several or all of the following programs designed to assist families and children: programs under the Social Security Act (AFDC, child support enforcement,

JOBS, medicaid and maternal and child health), WIC, education programs, mental health programs, juvenile justice programs, substance abuse programs, programs for the developmentally disabled, and other programs determined by the State and approved by the Secretary.

States receiving grants will be required to describe Federal, State, and local laws and administrative policies that impede coordination of the delivery of services to families and children. States also must describe the steps they have taken or intend to take to eliminate or reduce problems in coordination that result from State or local laws and policies. They must also provide the Secretary with information on barriers they have identified in Federal legislation and policy that limit States' ability to coordinate services for families and children.

The Secretaries of HHS, Agriculture, and Education, and the Attorney General, will be required to review Departmental policies to determine whether changes in regulations and policies can be made without legislative changes to improve the funding and delivery of services for children and families. In undertaking this review, they must consult with representatives of State and local governments.

A report including recommendations for making both legislative and non-legislative changes to improve coordination must be submitted to the Congress by July 1, 1993, and must include a description of any technical assistance that the Departments will provide to the States to assist them in program coordination and an analysis of impediments to coordination described by participating States, as such impediments relate to Federal policies and laws.

Any State approved by the Secretary to operate a demonstration project to improve coordination of services will be required to conduct an evaluation of the project's effectiveness in improving the coordination and the funding of child and family services, and report the results of the evaluation to the Secretary upon completion of the project. States may use regular title IV–E administrative matching funds for evaluation.

(b) Flexible Spending Demonstrations.—Title IV–E is amended to authorize up to 10 States to conduct demonstration projects, intended to provide States with the flexibility and resources necessary to develop innovative policies and appropriate service networks to preserve and strengthen families with children at risk of needing out-of-home placement; to reunite children with their families as promptly as possible if out-of-home placement is necessary; to place children in adoptive homes or other permanent arrangements, including guardianship and placement with relatives, if reunification is not possible or not in the child's best interest; and to provide for evaluation of innovative State programs and assessment of the impact of such programs on children and families.

To the extent feasible in view of the number of approvable applications received, the Secretary shall approve at least 2 and not more than 4 applications from States with populations of less than 1.5 million; at least 3 and not more than 5 from States with populations between 1.5 and 7 million; and at least 2 and not more than 4 from States with populations over 7 million. No more than 4 appli-

cations shall be approved for any one geographical region of the country, as determined by the Secretary.

The amount of the grant payable to a State in a fiscal year will equal the "applicable percentage" of the sum of the following: the amounts paid to the State for fiscal year 1992 under sections 423 and 474 (except for adoption assistance payments and administrative costs associated with adoption assistance); the portion of the amount (if any) by which title IV-B appropriations for a fiscal year exceed such appropriations for fiscal year 1992, that would be payable to the State if the State were not conducting a demonstration; and 20 percent of the amount that would have been payable to the State for the immediately preceding fiscal year under section 423 if the State were not conducting a demonstration.

The term "applicable percentage" means the following quotient, as determined by the Secretary after taking into account estimates prepared by the evaluating entity: the number of children in the demonstration areas with respect to whom the State would have made foster care maintenance payments under section 472 for the fiscal year if the Secretary had approved the State IV-E plan and the State were not authorized to conduct a demonstration project, divided by the total number of such children in the State.

During the period that the State is conducting a demonstration, certain provisions of title IV-B and IV-E will not apply to the State.

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The conference agreement adopts the House bill provision for comprehensive service projects, but limits participation to 3 States, and modifies the calculation of the grant amount. The conferees encourage the Governor of a participating State to consider implementing joint funding and other mechanisms designed to ensure the commitment of each of the child welfare, juvenile justice and mental health systems to the project, and to convene an interagency task force including nonprofit provider agencies to jointly plan and implement the comprehensive service project in the State.

In addition, the conference agreement adopts the Senate provision authorizing funds to conduct demonstrations to improve coordination of services, and would allow up to 3 States to participate.

Effective date.—October 1, 1992.

2. Changes to eligibility requirements under title IV-E

PRESENT LAW

Under a State title IV-E plan, a State must make foster care maintenance payments with respect to a child who would be classified a dependent child under the AFDC program, but for the child's removal from the home of a relative, if (and subject to certain other conditions): the child received AFDC at the time removal was initiated; the child would have received AFDC at the time removal was initiated if application had been made; or the child had been living with a caretaker relative within 6 months prior to the time

removal was initiated, and would have received AFDC at the time removal was initiated if the child had been living with such a relative and application had been made.

Also, under a State title IV–E plan, a State must enter into adoption assistance agreements with the adoptive parents of children with special needs. Under an adoption assistance agreement, a State may make adoption assistance payments with respect to a child with special needs if the child:

(a) at the time adoption proceedings were initiated, met the requirements necessary to be classified a dependent child under the AFDC program or would have met such requirements except for his removal from the home of a caretaker relative; or meets all the eligibility requirements for the SSI program;

(b) received AFDC at the time removal from the home of a relative was initiated, would have received AFDC if application had been made, or had been living with a caretaker relative within 6 months prior to the time removal was initiated and would have received AFDC at the time removal was initiated if the child had been living with such a relative and application had been made; or meets all the eligibility requirements of the SSI program.

a. Abandoned children

(Section 202 of House bill)

PRESENT LAW

States cannot generally claim title IV–E reimbursement for abandoned children, since the financial circumstances and living arrangements of the parent(s) cannot be determined to verify actual or potential AFDC eligibility.

HOUSE BILL

States may make foster care maintenance and adoption assistance payments under title IV–E to each child entering foster care on or after October 1, 1993 who has been determined by a court of competent jurisdiction to be an abandoned child, for whom the State agency cannot, despite diligent efforts, determine the financial circumstances and living arrangements of the parent(s), and who is under the responsibility of the State.

Effective date.—October 1, 1993.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

b. Clarification of "removal from home" requirement

(Section 203 of House bill)

PRESENT LAW

HHS policy, articulated in a "policy interpretation question" (PIQ) issued August 13, 1987, interprets title IV-E eligibility requirements relating to "removal from the home" to mean children must be *physically* removed from the home. Thus, for example, under this interpretation a child who goes to live with his grandmother before custody is transferred to the State and the child is formally placed into foster care with the grandmother, is not eligible for title IV-E because no *physical* removal has occurred.

HOUSE BILL

Federal reimbursement under the title IV-E foster care maintenance payments and adoption assistance programs may be made on behalf of children placed in foster care or for adoption who the State has not physically removed from the home of the caretaker, but of whom the State assumes legal custody, and who otherwise meets the eligibility requirements for the program.

Effective date.—October 1, 1992.

In addition, effective on the date of enactment, States may claim Federal reimbursement retroactively for foster care and adoption assistance expenditures made by the State from October 1, 1982 to October 1, 1992 with respect to such children. States may have one year from the date of enactment to submit old claims (i.e., claims that are submitted more than 2 years after expenditure).

Effective date.—Date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

c. *Dissolved adoptions*

(Section 204 of House bill and section 7103(b) of Senate amendment)

PRESENT LAW

A child on whose behalf title IV-E adoption assistance payments are made (and whose adoption has been legally finalized by a judicial decree of adoption), but whose adoption is subsequently set aside by the court and who returns to foster care, is often not eligible for title IV-E foster care maintenance and adoption assistance payments, because the income or resources of the adoptive family has made the child ineligible for the AFDC or SSI program.

HOUSE BILL

States may make foster care or adoption assistance payments under title IV-E on behalf of a child: with respect to whom such payments were previously made, whose adoption has been set aside by a court, who otherwise meets eligibility requirements under title

IV–E; and who fails to meet the AFDC eligibility requirements, but would meet them if the adoption were treated as never having occurred, and the child were treated as if in the same financial and other circumstances as when the child last received title IV–E payments.

Effective date.—October 1, 1992.

SENATE AMENDMENT

Same as House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

Effective date.—October 1, 1992.

d. Extension of definition of special needs child

(Section 206 of House bill)

PRESENT LAW

To be eligible for adoption assistance a child must be determined to have "special needs." A child shall not be considered a child with special needs unless: (1) the State determines the child cannot or should not be returned to the home of his parents; and (2) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as ethnic background, age, membership in a minority or sibling group, a medical condition or physical, emotional or mental handicap) that make adoption unlikely without providing financial or medical assistance, and (B) a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without providing such assistance.

HOUSE BILL

A child shall not be considered a child with special needs unless the State determines: (1) the child cannot or should not be returned to the home or legal custody of the parents; (2) there exists a specific factor or condition (such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) or information available and known about the child's history indicating a high risk of medical conditions, or emotional, physical, or mental handicaps, which makes it reasonable to conclude that the child cannot be placed for adoption without an adoption assistance agreement; and (3) a reasonable but unsuccessful effort has been made to place the child with appropriate adoptive parents without providing financial or medical assistance.

A child also may qualify for title IV–E adoption assistance as a child with special needs if the State determines that the child has been adopted; immediately prior to adoption, was under the care and responsibility of the State agency administering the State plan; and has a mental, physical, or emotional handicap that existed before the adoption but was not diagnosed until after the adoption,

or that first manifests itself after the adoption but is congenital or was caused before the adoption.

States will be required to submit a description of those factors and conditions which make a child with special needs to the Secretary, as well as any modifications that are made to the factors and conditions.

Effective date.—October 1, 1993, with respect to children who are adopted after September 30, 1993.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that with respect to children who qualify for title IV–E adoption assistance after they have been adopted, the provision is modified to include as eligible children who may have been under the care and responsibility of a private nonprofit agency immediately prior to their adoption, in addition to children who had been under the care and responsibility of the State agency.

The conferees do not intend this provision to restrict the ability of adoptive parents to obtain adoption assistance after a final decree of adoption as a result of a successful appeal through the State's fair hearing process or an equivalent administrative review procedure.

Effective date.—October 1, 1993, with respect to children who are adopted after September 30, 1993.

e. Time frame for judicial determinations on voluntary placements

(Section 212 of House bill)

PRESENT LAW

No payment may be made under title IV–E to reimburse a State for foster care maintenance payments in the case of any child who was removed from the home as a result of a voluntary placement agreement and has remained in the placement for more than 180 days, unless there has been a judicial determination within the first 180 days of the placement to the effect that the placement is in the best interests of the child.

HOUSE BILL

With respect to any child who remains in foster care under a voluntary placement agreement for more than 180 days without there having been a judicial determination within the first 180 days of the placement to the effect that the placement is in the best interests of the child, Federal reimbursement may be claimed for foster care maintenance payments beginning 180 days after the date that such judicial determination is finally made.

Effective date.—October 1, 1992, with respect to foster care placements made on or after October 1, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

3. Study of reasonable efforts requirement by advisory committee

(Section 207 of House bill and section 7105 of Senate amendment)

PRESENT LAW

In order for a State to be eligible for title IV–E funding, the State plan must specify that, in each case, reasonable efforts will be made prior to the placement of a child in foster care to prevent the need for foster care and make it possible for the child to return home (sec. 471(a)(15)). The statute also provides that for each child entering foster care after October 1, 1983, a judicial determination must be made that there were reasonable efforts to prevent placement in foster care. (sec. 472(a)(1)).

HOUSE BILL

Within 90 days of enactment, the Secretary must establish an advisory committee of at least 9 members to study and make recommendations concerning the implementation of the "reasonable efforts" requirement of section 471(a)(15). The advisory committee must include representatives of private, nonprofit organizations with an interest in child welfare; agencies of States and political subdivisions responsible for child protective services, foster care services or adoption services; judicial bodies of States and political subdivisions who adjudicate family law issues; and attorneys and others who represent children and parents.

No later than April 1, 1994, the advisory committee must submit a report to the Secretary and to Congress that includes legislative or other recommendations concerning the implementation of the "reasonable efforts" requirements.

Members of the advisory committee would receive compensation while engaging in the business of the advisory committee at a rate fixed by the Secretary, not to exceed GS–18 of the General Schedule established under sec. 5332 of Title V, U.S.C., and would be allowed travel expenses. Full-time officers or employees of the United States could not receive additional pay, allowances or benefits by serving on the committee. The committee could employ and fix the compensation of one individual.

Effective date.—Date of enactment.

SENATE AMENDMENT

Similar to House provision except advisory committee must include a representative of hospitals that treat a significant number of boarder babies. A representative of attorneys and others who represent children and families is not required. The advisory com-

mittee's report is due by January 1, 1994 and must include recommendations for making improvements in the implementation of the requirements under section 471(a)(15). There is no specific authorization for the committee to hire staff.

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House and Senate provisions with respect to an advisory committee on reasonable efforts, modified to delete the required representation on the committee of attorneys and others who represent children and families, and representatives of hospitals that treat a significant number of boarder babies.

Effective date.—Date of enactment.

4. Tax deduction for costs of adopting a child with special needs

(Section 7104 of Senate amendment)

PRESENT LAW

Taxpayers are not allowed to deduct expenses related to adopting a child in determining their Federal income tax liability.

HOUSE BILL

No provision.

SENATE AMENDMENT

Taxpayers may deduct certain allowable expenses (up to a maximum of $3,000) of adopting a special needs child. The deduction may be taken whether or not the taxpayer itemizes deductions. Allowable expenses include reasonable and necessary adoption fees, court costs, attorneys fees, and other expenses directly related to the legal adoption of the child which are eligible for reimbursement under the title IV-E adoption assistance program. A special needs child is a child with respect to whom the State has determined that there exists a specific factor or condition (such as ethnic background, age or membership in a minority or sibling group, or medical condition or physical, mental or emotional handicap) that makes it difficult to find an adoptive home for the child.

Effective date.—The provision is effective for adoptions occurring after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date.—The provision is effective for adoptions occurring after December 31, 1992.

5. Periodic review of foster care maintenance payments

(Section 209 of House bill)

PRESENT LAW

Each State establishes its own foster care maintenance payment levels. Under current title IV-E law, as part of the State plan requirements, States must periodically review their foster care maintenance and adoption assistance payments.

HOUSE BILL

States are required to review their foster care maintenance payment and adoption assistance levels at least every three years to assure their continuing appropriateness, and report the results of the review to the Secretary and the public at such time and in such form and manner as the Secretary may by regulation require.

At a minimum, the report must include a statement of the manner in which the foster care maintenance payment level is determined, including information on the actual cost of foster care; information regarding the basic payment level and whether this level includes an amount to cover the cost of clothing; and information regarding whether the payment level varies by the type of care or the special needs or age of the child, and, if so, the payment levels for each special needs, care or age category.

States that do not pay a differential rate for children with special needs who are HIV-positive or have AIDS, or children who are drug-addicted or have complications due to drug or alcohol exposure, must provide the reasons. In addition, the report must include information on any limitations imposed by the State on adoption assistance payment levels.

Effective date.—October 1, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

Effective date.—October 1, 1992.

6. Amendments to case review system and case plan requirements

PRESENT LAW

To receive certain incentive funds under title IV-B, States are required to implement and operate, in addition to other activities, a case review system for each child receiving foster care under the supervision of the State. Section 475 of title IV-E defines "case review system" to mean a procedure for assuring that: each child has a case plan meeting specified requirements, the status of each child is reviewed at least once every 6 months by a court or by administrative review, and each child in foster care is assured a dispositional hearing in a court, or by an administrative body appointed or approved by the court, no later than 18 months after the original placement in foster care (and periodically thereafter during a continuation of foster care).

The dispositional hearing determines: the future status of the child, including but not limited to, whether the child should be re-

turned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should be continued in foster care on a permanent or long-term basis; and for a child who is age 16 or older, the services needed to assist the child to make the transition to independent living.

a. Accelerated dispositional hearing

(Section 210 of House bill)

HOUSE BILL

The definition of "case review system" is amended to require that the dispositional hearing take place no later than 12 months after placement, rather than the current 18 months.

Effective date.—October 1, 1994.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House provision, modified to require the dispositional hearing to take place no later than 15 months after placement. The conferees note that States may, prior to fiscal year 1995, phase-in implementation of the requirement in order to secure a smooth transition to the 12-month dispositional hearing standard.

Effective date.—October 1, 1994.

b. Period review of children free for adoption

(Section 211 of House bill and Senate 7103(a) of Senate amendment)

HOUSE BILL

With respect to any child for whom a determination is made that such child should be placed for adoption, the court or administrative body that conducts a dispositional hearing must determine and document the measures needed to enhance the likelihood of making the child legally eligible for adoption and finding an adoptive family for the child.

With respect to any child who is legally eligible for adoption, the court or administrative body that conducts a dispositional hearing must determine and document the specific measures which have been and need to be taken to make an adoptive placement, or a finding that placement of the child in an adoptive family would be inappropriate.

Effective date.—October 1, 1994.

SENATE AMENDMENT

In the case of a child who is legally eligible for adoption, the court or administrative body conducting the case review must determine and document the specific measures taken by the State agency to make a placement of the child in an adoptive family, or

a finding that adoptive placement would be inappropriate for the child.

Effective date.—October 1, 1994.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that requirements would apply to the court or administrative body conducting the case review, rather than the court dispositional hearing.

Effective date.—October 1, 1994.

c. "Most appropriate setting" requirement

(Section 7106(a) of Senate amendment)

PRESENT LAW

Current law requires each foster child to have a case plan designed to achieve placement in the "least restrictive (most family-like) setting available."

HOUSE BILL

No provision.

SENATE AMENDMENT

The current law requirement will be modified to require placement in "the least restrictive (most family-like) and most appropriate setting available."

Effective date.—This provision applies to case reviews conducted on or after July 1, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date.—This provision applies to case reviews conducted on or after October 1, 1992.

d. Citizen review volunteers

(Section 7106(b) of Senate amendment)

HOUSE BILL

No provision.

SENATE AMENDMENT

The current law definition of case review system will be amended to provide that, to the extent determined appropriate by the State, citizen volunteers may participate in making recommendations at either the periodic court of administrative reviews, or at dispositional hearings. This provision is effective upon enactment.

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date.—Date of enactment.

e. Health care plans for foster children

(Section 7111 of Senate amendment)

HOUSE BILL

No provision.

SENATE AMENDMENT

Each child's case plan must include a record indicating that the child's foster care provider was advised (where appropriate) of the child's eligibility for early and periodic screening, diagnostic and treatment services under Medicaid.

Effective date.—The provision applies to case plans established or reviewed on or after January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date.—The provision applies to case plans established or reviewed on or after January 1, 1993.

7. Placement accountability

(Section 213 of House bill)

PRESENT LAW

Title IV-E does not require the States to implement any specialized reviews or procedures in the case of children who are placed in foster care institutions outside the State.

HOUSE BILL

The case plan for a title IV-E foster child who is placed by the State in a foster care facility outside the State must include a finding that: efforts have been made to place the child in a facility in the State; the child needs services not available in the State; the placement is in the least restrictive (most family like) setting available, consistent with the best interest and special needs of the child; and the placement has been approved by a court or a review committee (such as a foster care review board) established by the State that reviews out-of-state placements.

The review committee must include appropriate State personnel, child advocates, parents, and other individuals the State deems appropriate. The placement must also be reviewed by a court not less frequently than annually, with the child present, unless the court determines that due to the age or condition of the child, or for some other good cause, the presence of the child would be detrimental to the child or would not accomplish a useful purpose.

The State agency must ensure that any out-of-state facility in which a title IV-E foster child is placed meets all of the originating State's applicable standards or is operated in accord with recommended standards of national organizations. In addition, the State must submit a report to the Secretary by the end of fiscal year 1994 on the number and characteristics of children placed in out-of-

state care and the reasons why such children were not placed in foster care within the State.

Effective date.—October 1, 1993.

The data collection system established by the Secretary pursuant to section 479(b)(2) of title IV–E must provide State-specific information on the numbers and characteristics of foster children in out-of-state foster care placements.

Effective date.—October 1, 1994.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that the provision (excluding the data collection requirement) expires at the end of fiscal year 1996. Further, the House provision requiring State agencies to ensure that out-of-State facilities in which title IV–E children are placed meet certain standards is modified to require that the State agency ensure that such facilities have certified that they meet such standards.

Effective date.—Same as House bill.

8. Independent living amendments

a. Treatment of assets of youth participating in independent living program

(Section 214 of House bill and section 7109(a) of Senate amendment)

PRESENT LAW

The independent living program under title IV–E is a State entitlement program designed to help ease the transition of foster children age 16 and older to independent living. States may include children who are not receiving title IV–E foster care benefits in the program, and may also allow children who have left foster care, up to age 21, to participate.

Under current law, the AFDC resource test applies to a foster child on whose behalf the State is claiming reimbursement under title IV–E. Should such a child accumulate assets above those allowed under AFDC while on foster care: the child may become ineligible to participate in the independent living program, if the State allows only title IV–E eligible foster children to participate; and the child may lose Medicaid benefits, since foster children receiving State-only benefits are not categorically eligible for Medicaid and generally must meet a resource test.

Youth who leave foster care and apply for or receive AFDC benefits are subject to the same rules regarding income and resources as other AFDC applicants and recipients.

HOUSE BILL

With respect to a child who is receiving assistance under an independent living program, an amount of the assets of the child

which would otherwise be regarded as resources for purposes of determining eligibility for AFDC may be disregarded for the purpose of allowing the child to establish a household. The amount may not exceed an amount determined by the State child welfare agency as reasonable for the purpose of establishing a household.

Effective date.—October 1, 1992.

SENATE AMENDMENT

Same as House provision, except that a certain amount of assets may be disregarded for purposes of determining eligibility for Medicaid, as well as AFDC.

Effective date.—October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date.—October 1, 1992.

b. Extension of independent living program

(Section 7101 of H.R. 11 as passed by the House and section 7109(b) of Senate amendment)

PRESENT LAW

The independent living program is currently authorized through fiscal year 1992. The entitlement ceiling in fiscal year 1992 is $70 million.

HOUSE BILL

The independent living program will be permanently authorized, with the current law ceiling of $70 million indexed to inflation.

Effective date.—October 1, 1992.

SENATE AMENDMENT

The conference agreement provides that the independent living program will be permanently authorized, at $70 million per year.

Effective date.—October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill.

Effective date.—October 1, 1992.

c. Optional lowering of age of eligibility

(Section 7101 of H.R. 11 as passed by the House)

PRESENT LAW

The independent living program is available to foster children age 16 and older.

HOUSE BILL

At State option, the age of eligibility for independent living services could be lowered to 14 years old.

Effective date.—Date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

d. Demonstration of independent living services for young adults

(Section 7127 of H.R. 11 as passed by the House)

HOUSE BILL

Would authorize such sums as necessary for the Secretary to conduct a three-year demonstration in one State that would provide community-based services for former foster children ages 21 to 25. Such services could include self-help groups, counseling, treatment for survivors of abuse, mentoring, alumni groups, and/or coordination of and referral to existing community services by independent living agency staff.

Effective date.—Date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, modified to require the State or locality conducting the demonstration to arrange for an evaluation of the impact of the demonstration on the well-being of the individuals who participate.

Effective date.—Date of enactment.

9. Elimination of foster care ceilings and transfer authority

(Section 215 of House bill)

PRESENT LAW

Mandatory State-by-State ceilings are placed on foster care funds if the Federal appropriation for child welfare services reaches a specified trigger level, currently $325 million. In the absence of a mandatory foster care ceiling, States may elect to operate under a voluntary ceiling. A State may use one of several methods to calculate the most favorable ceiling. The mandatory ceiling has not gone into effect since 1981. The majority of States are operating significantly above their respective ceiling levels.

Under a voluntary ceiling, a State may transfer a portion of its unused foster care funds to its child welfare services program. It is

estimated that the amount transferred by States will total $1 million for fiscal year 1992.

The foster care ceilings and the authority to transfer foster care funds to child welfare services expire September 30, 1992.

HOUSE BILL

The provisions of current law establishing a mandatory and voluntary ceiling on foster care funds, and enabling States to transfer "unused" foster care funds to their child welfare services program, are eliminated.

Effective date.—October 1, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

Effective date.—October 1, 1992.

10. Training activities

a. Regulations for training of agency staff and foster and adoptive parents

(Section 216 of House bill and section 7110(b) of Senate amendment)

PRESENT LAW

Under current law, States are entitled under the title IV–E program to a payment equal to 75 percent of expenditures for the training of personnel employed or preparing for employment by the State or local child welfare agency, and for the training of foster and adoptive parents.

HOUSE BILL

Not later than 9 months after enactment and after consultation with an advisory body, the Secretary must publish final regulations establishing detailed guidelines to assist States in using Federal matching funds authorized under title IV–E for the purpose of providing training for individuals who are employed, or preparing for employment, by State and local child welfare agencies, and foster and adoptive parents. The advisory body must include representatives of nonprofit organizations with an interest in child welfare (including organizations that train professional social workers in the field of child welfare services) and organizations representing State and local child welfare agencies.

Effective date.—Date of enactment.

SENATE AMENDMENT

The Secretary is required, not later than April 1, 1993, to publish final regulations establishing detailed guidelines to assist States in using Federal matching funds that are authorized under current law for the purpose of providing training for individuals

who are employed or preparing for employment by State and local child welfare agencies.

The Secretary also is required to develop and publish a model staff recruitment, training and staff retention program for use by State and local child welfare agencies, by April 1, 1993.

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, but would require the establishment of an advisory committee within 180 days of enactment, and final regulations withn 15 months. The conference agreement also includes the Senate provision regarding a model staff recruitment, training and retention program, but would require that the model program be published by October 1, 1993.

Effective date.—Date of enactment.

b. Matching funds for foster and adoptive parent training

(Section 7102 of H.R. 11 as passed by the House and section 7110(c) of Senate amendment)

PRESENT LAW

The current provision allowing 75 percent Federal matching funds for certain training expenses expires on September 30, 1992.

HOUSE BILL

The present law authorization for Federal reimbursement at 75 percent under title IV–E for training of foster and adoptive parents and for training staff of approved child care institutions providing care to foster and adopted children is permanently extended.

Effective date.—October 1, 1992.

SENATE AMENDMENT

The present law authorization for Federal reimbursement at 75 percent under title IV–E for training of foster and adoptive parents and for training staff of approved child care institutions providing care to foster and adopted children is extended through fiscal year 1995.

Effective date.—October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

Effective date.—October 1, 1992.

c. Child welfare traineeships

(Section 7110(a) of Senate amendment)

PRESENT LAW

Title IV–B (section 426(a)(C) authorizes such sums as may be necessary to enable the Secretary to make grants to public or private nonprofit institutions of higher education for training personnel for work in the field of child welfare.

House Bill

No provision.

Senate Amendment

The Secretary may not approve an application for a training grant unless the institution:

(1) provides assurances that students receiving stipends will enter into agreements with the institution to: participate in on-site training at a child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship; be employed for a period of years equal to the period of the traineeship in a child welfare agency in any State after completing the postsecondary education for which the traineeship was awarded; to provide the institution and the Secretary with evidence of compliance; and in the event of noncompliance, to repay to the Secretary all or a portion of the stipend, plus interest, and if applicable, reasonable collection fees;

(2) provides assurances that the institution will provide appropriate student supervision and support; enter into agreements with child welfare agencies for the on-site training of recipients; develop and implement a curriculum in the child welfare field that reflects current knowledge about best practices in delivering child welfare services, and consult with child welfare agencies in developing the curriculum; allow those already working in the child welfare services field to be eligible for stipends in order to complete degree requirements; and develop and implement a system to track (for a period of three years) students who complete a child welfare services program of study to determine the percentage of such students who secure and retain employment in the child welfare field.

A student will not be considered in violation of an agreement during any period in which the student satisfies repayment exceptions prescribed by the Secretary in regulations.

Effective date.—Effective for grants awarded on or after January 1, 1993.

Conference Agreement

The conference agreement follows the Senate amendment.

Effective date.—Effective for grants awarded on or after April 1, 1993.

11. Publication of program data

(Section 217 of House bill)

Present Law

Under current law, the Secretary is not required to submit to Congress general program data and information relating to the child welfare, foster care and adoption assistance programs under titles IV–B and IV–E of the Social Security Act.

HOUSE BILL

Beginning for fiscal year 1993, the Secretary is required to submit to the Ways and Means and Finance Committees and to make available to the public on an annual basis certain information relating to the titles IV-B and IV-E programs, including information on: Federal and State spending; program participation; reviews and audits; foster care maintenance payment rates; services funded under title IV-B; research, training and demonstration projects; and any other information the Secretary deems useful for monitoring the operations of the programs.

Effective date.—October 1, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that the provision will apply beginning for fiscal year 1994, instead of 1993.

Effective date.—October 1, 1993.

12. Review of child welfare activities

a. New review system

(Section 218 of House bill and sections of 7115 and 7116 of Senate amendment)

PRESENT LAW

Title IV-B.—There are no formal review provisions for title IV-B in current law. However, section 427 of title IV-B contains certain protections for foster children which States must comply with to be eligible to receive incentive funds (see item I.C. above). HHS has developed a review system to determine State compliance with these protections.

Title IV-E.—Section 471(a)(13) of title IV-E requires, as a component of State plans under title IV-E, that States arrange for periodic and independent audits of their activities under titles IV-B and IV-E, to be conducted at least once every three years. In addition, section 471(b) allows the Secretary of HHS to withhold or reduce payments to States upon finding that a State plan no longer complies with State plan requirements, or, in the State's administration of the plan, there is substantial failure to comply with its provisions. The Secretary must first provide reasonable notice and opportunity for a hearing.

In practice, the Secretary may disallow expenditures for Federal reimbursement under title IV-E as a result of several review procedures, including audits conducted pursuant to section 471(a)(13). Disallowances may result from audits conducted by the Inspector General, regional office reviews of quarterly expenditure reports submitted by States as part of the claims reimbursement process, or Federal financial reviews.

Title IV–E financial reviews are conducted retrospectively, after conclusion of the fiscal year. However, States are not generally reviewed annually, and States may be reviewed for more than one fiscal year at a time.

States may appeal disallowances to the Departmental Appeals Board.

House Bill

A new part G is added to title IV of the Social Security Act, which requires the Secretary to establish, by regulation, a new, integrated child welfare review system. Beginning with fiscal year 1994, the new review system will apply to all child welfare activities under approved State plans for child welfare services, including the new entitlement (title IV–B), and foster care and adoption assistance (title VI–E).

By April 1, 1993, the Secretary must issue final regulations that will establish a system to:

(1) assess State child welfare activities to identify areas where requirements are not being met and the degree to which they are not being met;

(2) impose graduated financial penalties on States in cases of substantial noncompliance, unless corrective action is taken; and

(3) provide States with technical assistance to bring about compliance.

The Secretary's child welfare review regulations must contain the following elements:

(1) a requirement that each State's child welfare programs be reviewed to determine whether and the degree to which they comply with State plan requirements for child welfare services and foster care and adoption assistance; and the extent to which claims for foster care maintenance payments and adoption assistance payments are proper and eligible for Federal reimbursement;

(2) the criteria to be used in judging compliance with State plan requirements and measuring the extent to which payments for foster care maintenance and adoption assistance under title IV–E are eligible for Federal reimbursement;

(3) thresholds, (which must be periodically reviewed, and, if necessary, revised) with respect to each major compliance category and any subcategories the Secretary may deem especially important, for determining whether State programs are out of compliance or substantially out of compliance;

(4) interim thresholds to be used in each State's first review under the new system;

(5) periodically revised uniform review procedures that enable a single, integrated, and timely review of each State's compliance, and include sampling of payments for foster care maintenance and adoption assistance, and other appropriate program activities;

(6) provisions that will exclude program deficiencies or errors from consideration in judging compliance if they are technical or due to a failure to implement changes in law in

the 6 months following the law's effective date or issuance of regulations, or due to a State's reliance on and correct use of erroneous information or written Federal policy provided by the Secretary; and

(7) for cases of substantial non-compliance, a method of calculating financial penalties that will be proportional to the degree of non-compliance and, to the extent appropriate, based on the graduated penalty formula used in calculating disallowances under the AFDC quality control system.

Under the new review system, the Secretary must complete an integrated review of each State's child welfare programs at least once every 3 years for the most recently completed fiscal year, and must complete at least 1 review of each State's programs by the end of fiscal year 1997. On a determination of non-compliance in any matter, the Secretary must give the State timely notification of the determination, including the basis for the determination and the amount of any financial penalty.

If a review finds a State's child welfare programs out of compliance, and the failure is not substantial, the Secretary may require the State to submit a corrective action plan and timetable, may annually review the State's corrective action progress, and must offer the State technical assistance in areas the Secretary judges appropriate.

If a review finds a State's child welfare programs out of compliance, and the failure is substantial, the Secretary must impose a financial penalty on the State proportional to the degree of non-compliance (which may be suspended or rescinded under certain conditions), make available to the State technical assistance to accomplish compliance, and annually review the State's progress until substantial compliance is achieved.

Any financial penalty for substantial non-compliance will be suspended if the State submits, and the Secretary approves, a corrective action plan and timetable, for as long as the plan is being fully implemented in accordance with the timetable. Any financial penalty will be rescinded when the State has fully implemented its corrective action plan in accordance with its approved timetable and has achieved substantial compliance.

States may appeal determinations of substantial non-compliance and any financial penalties to the Departmental Appeals Board. In addition to its authority to overturn or affirm the determinations, the Board may adjust the amount of any financial penalty, taking into account the amount proposed by the Secretary, the proportionality of the penalty to the degree of failure, and, where appropriate, whether the failure materially affected the protection of children who are in, or at risk of being placed in, foster care. After a decision by the Board, States may appeal to Federal district court, where the case will be reviewed based on the record established in the proceedings before the Board.

The bill repeals the authority under section 471(b) which allows the Secretary to withhold or reduce payments to States upon finding that a State plan no longer complies with State plan requirements, or, in the State's administration of the plan, there is a substantial failure to comply with its provisions.

Effective on the date of enactment, the bill: permanently prohibits the Secretary from reducing any payment to, withholding any payments from, or seeking any payments from any State, under titles IV–B or IV–E, by reason of a determination made in connection with a review of State compliance with the title IV–B foster care protections, for any fiscal year before fiscal year 1995; and prohibits the Secretary, until October 1, 1994, from reducing any payments to, withholding any payments from, or seeking any payments from any State, under title IV–E, by reason of a determination made in connection with a Federal title IV–E financial review or an audit conducted by the Inspector General.

Effective upon enactment, within 10 months after deferral action (action to suspend payment) is taken on a claim for reimbursement under title IV–E, the Secretary must determine the allowability of the deferred claim, or if unable to reach such a determination within the period, pay the claim subject to a later determination of allowability. Any deferral action must be taken within 30 days after the receipt of a quarterly expenditures report.

Effective date.—Date of enactment.

SENATE AMENDMENT

By May 1, 1993, the Secretary is required to submit to the Committee on Finance and the Committee on Ways and Means recommendations for legislation to establish a system for the review of each State child welfare program, and the provision of technical assistance to State programs. The term "child welfare program" is defined to mean all activities engaged in by the State under parts IV–B and IV–E of the Social Security Act.

Reviews of each State program shall be for the purpose of assuring whether the program is being carried out as required by statute; identifying any area in which the program is not being carried out as required, and the degree to which it is not being carried out; and identifying the circumstances under which financial penalties shall be imposed unless corrective action is taken.

Recommendations must include provisions requiring each State child welfare program to be reviewed periodically to determine whether and, where appropriate, the degree to which the program complies with State plan requirements, and the extent to which the amounts claimed to have been expended by the State for foster care maintenance payments and adoption assistance are eligible for Federal reimbursement. In addition, recommendations must specify the criteria that are to be used to assess whether the State's program has complied with Federal requirements, and the degree of such compliance.

In developing the recommendations, the Secretary must consult with representatives of State agencies administering child welfare programs; representatives of private nonprofit organizations which have an interest in child welfare; and such other individuals as the Secretary may determine.

The Secretary is required to pay any State claim for reimbursement of expenditures under title IV–E within 90 days of its receipt, unless the Secretary issues a deferral or disallowance of such claim within the 90-day period.

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill, with modifications designed to provide the Secretary greater flexibility in developing the regulations. The Secretary must issue final regulations by not later than January 1, 1994, to apply to conduct occurring on or after October 1, 1994. All programs must be reviewed by the end of fiscal year 1998. The regulations must be developed in consultation with State agencies. The conferees do not intend that the Secretary, in developing the regulations, be limited to the requirements outlined in the provision.

Effective on the date of enactment, the bill prohibits the Secretary, until October 1, 1993, from: reducing any payment to, withholding any payments from, or seeking any payments from any State, under titles IV–B or IV–E, by reason of a determination made in connection with a review of State compliance with the title IV–B foster care protections; and reducing any payments to, withholding any payments from, or seeking any payments from any State, under title IV–E, by reason of a determination made in connection with a Federal title IV–E financial review or an audit conducted by the Inspector General.

The Secretary is required to pay any State claim for reimbursement of expenditures under title IV–E within 90 days of its receipt, unless the Secretary issues a deferral or disallowance of such claim within the 90-day period.

Effective date.—Date of enactment.

b. Moratorium on collections

(Section 7103 of H.R. 11 as passed by the House and section 7114 of Senate amendment)

PRESENT LAW

The Omnibus Budget Reconciliation Act of 1989 prohibited the Secretary from collecting any funds from States as a result of a disallowance in connection with a section 427 triennial review, until October 1, 1991.

HOUSE BILL

The OBRA moratorium on collection of penalties resulting from section 427 reviews is extended to October 1, 1993, for any Federal fiscal year preceding fiscal year 1994, and will apply to any review of State compliance with Section 427.

Effective date.—October 1, 1992.

SENATE AMENDMENT

Same as House bill.

Effective date.—October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

Effective date.—October 1, 1992.

C. Information and Management Systems

(Section 208 of House bill and section 7108 of Senate amendment)

Present Law

Section 479 of title IV-E requires that the Secretary promulgate final regulations by December 31, 1988 providing for the implementation of a foster care and adoption data collection system. The data collection system is required to provide national information with respect to foster and adoptive children, whether or not they are eligible for benefits under title IV-E. The final regulations must provide for the full implementation of the data collection system not later than October 1, 1991.

Under title IV-E, Congress established an Advisory Committee on Adoption and Foster Care Information, to report to the Secretary and Congress its evaluations and recommendations with respect to establishing, administering and financing the national foster care and adoption data collection system. In its report, the Advisory Committee included, among other recommendations, that: the Federal government should provide funding for 100 percent of the add-on developmental expenses incurred by States, plus Federal reimbursement at a rate of 50 percent for ongoing operational costs; and a work group be established by the Secretary so that the Federal government consults with State officials as well as representatives from appropriate groups on the planning and implementation of the new data collection system.

The Secretary proposed regulations for the data collection system on September 27, 1990. The proposed regulations would allow States to receive Federal reimbursement for the costs of the establishment and maintenance of the data collection system as an administrative cost under title IV-E at the matching rate of 50 percent. The proposed rules would require the States to allocate the costs of data collection, however, and would limit the amount a State may claim to a proportionate share of the children adopted and in foster care who are eligible under the title IV-E program.

House Bill

States may claim 90 percent Federal matching funds for expenditures for the planning, design, development or installation of statewide mechanized data collection and information retrieval systems (including 90 percent of the full cost of hardware components for such systems) but only to the extent that such systems meet the requirements imposed by regulations issued by the Secretary pursuant to section 479; are determined by the Secretary to be likely to provide more efficient, economical and effective administration of the programs under title IV-E or title IV-B; and, to the extent practicable, are capable of interfacing with the data collection system in the State that collects child abuse and neglect data. The enhanced match will be available for three years following the date of enactment.

In addition, Federal matching at the rate of 50 percent may be used for costs related to the ongoing operation of such data collection and information systems.

Federal matching is available to reimburse data system costs related to both title IV–E and non-title IV–E foster and adoptive children who are required to be included in the system (or are an optional group).

The date for implementation of the data collection system is postponed to one year following the date that final regulations for the system are promulgated by the Secretary. In addition, the Secretary must establish a work group to advise on the planning and implementation of the system, and the work group must include representatives of State agencies and other appropriate groups.

Effective date.—Date of enactment.

SENATE AMENDMENT

States may claim 90 percent Federal matching funds for expenditures for the planning, design, development, or installation of statewide data collection and information retrieval systems (including 90 percent of the full cost of the hardware components of such systems) if such systems meet the requirements imposed by regulations issued pursuant to section 479; are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the title IV–E and title IV–B programs; and are capable of interfacing with the State's AFDC system to verify AFDC eligibility of a foster care child. The enhanced match will be available until September 30, 1995.

Federal matching funds at the 50 percent rate may be claimed for expenditures for operating costs with respect to title IV–E eligible children. Title IV–B funds may also be used to pay for operating costs (although they may not be used to draw down title IV–E matching funds).

Effective date.—January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, modified to require State systems also to be capable of interfacing, to the extent practicable, with the State's system to verify AFDC eligibility of a foster care child. Further, the provision is modified to allow States to claim 90 percent Federal matching beginning six months after the date of enactment. The enhanced match will be available until September 30, 1995. The date for implementation of the data collection system is not changed.

Effective date:—Date of enactment.

D. RESEARCH, DEMONSTRATION AND EVALUATION ACTIVITIES

PRESENT LAW

Section 426 of title IV–B authorizes funds for research, training and demonstration projects. Subsection (a) authorizes grants to public and non-profit institutions of higher learning and child welfare agencies for research or demonstration projects in the field of child welfare that are of regional or national significance and for

special projects to demonstrate new methods that will advance child welfare; State and local child welfare agencies for research to encourage experimental and special types of child welfare services; and institutions of higher learning to train personnel for work in the child welfare field.

1. Advisory Commission on Children and Families

(Section 401 of House bill)

PRESENT LAW

No provision.

HOUSE BILL

The Director of the Office of Technology Assessment (OTA) is directed to establish an Advisory Commission on Children and Families.

The Commission must, in order to identify cost-effective approaches to protect and enhance the physical, mental, emotional and financial well-being of children and their families, collect and assess information on: measures of the economic, social and physical well-being of children; the causes and effects of child maltreatment; the effectiveness of social services and income supports in strengthening the family unit; the effects of substitute care on the well-being of children; the adequacy of and effectiveness of cash assistance and tax policies in maintaining family incomes; the incentive effects of family policies; the effect of family breakup on family economics; ways to promote the parental support of children; participation in Federal programs supporting children and their families; program management and service delivery by public organizations working with families and children; and such other issues relating to children and their families as the Commission deems appropriate.

The Commission will have access to relevant information and data available from appropriate Federal agencies and must assure that its activities, especially the conduct of original research, is coordinated with the activities of Federal agencies.

Effective date.—Date of enactment.

See section 7123 of H.R. 11 as passed by the House (Measurement and Reporting of Welfare Dependency) for related provision.

SENATE AMENDMENT

No directly comparable provision.

See section 7171 of Senate amendment (Measurement and Reporting of Welfare Dependency) for related provision, same as House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

2. Child welfare/foster care research and evaluations

(Section 402 of House bill and section 7101 of Senate amendment)

a. Evaluations of child welfare/foster care services

HOUSE BILL

The Commission, directly or under contract with one or more independent research organizations, will evaluate child welfare service programs receiving funds under Part B, including programs in each of the three areas funded under the new title IV-B entitlement (reunification programs, preventive placement programs, and after care programs), in accordance with criteria the Commission deems appropriate. To the maximum extent practicable, the evaluations must use treatment and control groups of statistically appropriate sample sizes to measure the effects of a program. The evaluations must consider short-term and long-term program effects. An appropriate proportion of the evaluations must be evaluations of intensive family preservation programs.

Effective date.—Date of enactment.

SENATE AMENDMENT

An authorization of $8 million per year for 5 years will be provided to enable the Secretary to evaluate State programs receiving funds under the new innovative services entitlement according to criteria the Secretary must establish. The Secretary may conduct these evaluations through contracts with independent research organizations.

States may also use funds available to them under the new innovative services entitlement to conduct their own evaluations of child and family services. The evaluations must be conducted according to requirements the Secretary prescribes by regulation.

The Secretary must develop procedures to facilitate the coordination of evaluation efforts undertaken by HHS and the States and must, upon request of a State, provide technical assistance to the States in planning and designing their evaluations.

In developing evaluation criteria, the Secretary must consult with child welfare program administrators; private, nonprofit organizations with an interest in child welfare; and with individuals and organizations with recognized expertise in evaluating child welfare services or other related programs.

Evaluations by the Secretary and by the States must use outcome measures of children and families that can be compared with similar outcome measures of children and families that did not receive these services, and must include an assessment of family functioning. The Secretary must assure that an appropriate portion of the evaluations conducted by HHS will use experimental and control groups (of a sample size determined in accordance with appropriate statistical practices).

Beginning in fiscal year 1995, the Secretary must issue an annual report to the Committee on Finance and the Committee on Ways and Means on the status and findings of all evaluations undertaken by the Department. The report shall also include a sum-

mary description of State evaluations paid for with these Federal funds.

By December 1, 1996, based on evaluations conducted by the Secretary and the States, the Secretary must submit a report to the Committee on Finance and the Committee on Ways and Means with recommendations for legislation to improve services provided to families and children under title IV-B so as to strengthen families, to reduce the number of cases in which it is necessary to remove a child from home and place the child in foster care, to promote the reunification of families of children who have been placed in foster care, and to promote planned, permanent living arrangements for children, including adoption, where appropriate.

Effective date.—Date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with respect to evaluation of family preservation and family support services, with modifications. The provision requiring the Secretary to assure that an appropriate portion of the evaluations use experimental and control groups is amended to require the Secretary, where appropriate and feasible, to use experimental and control groups. Further, the provision requiring the Secretary to submit an annual report to Congress is deleted.

Effective date.—October 1, 1992.

b. Evaluations of alternative foster care arrangements

HOUSE BILL

In order to promote more appropriate and effective foster care for children in need of long-term care, the Commission must, directly or under contract with one or more independent research organizations, and according to criteria the Commission deems appropriate, evaluate the impact of alternative foster care arrangements and services on the well-being of children who have little prospect of being reunited with their families or of being adopted, and who represent a challenging group of foster children who are in need of specialized services or care.

Effective date.—Date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, modified to require the Secretary to conduct the evaluation, rather than the Commission.

Effective date.—Date of enactment.

c. Longitudinal child welfare data bases; studies of the dynamics of the child welfare population

HOUSE BILL

In order to develop more appropriate and effective intervention strategies with respect to children and their families who are referred or reported to the child welfare system, the Commission must, directly or under contract with one or more independent research organizations, plan, design, develop, and implement up to 5 child welfare data bases that provide longitudinal information on children and their families who are served by the public child welfare system, from the point at which such children are first referred or reported to such system.

Using data from such longitudinal data bases, the Commission must conduct such studies on children and their families served by public child welfare systems, as the Commission deems appropriate, including a study on the extent to which a lack of affordable housing is a factor in the placement of children in foster care.

Not later than October 1, 1993, the Secretary must, taking into account recommendations made by the Commission, enter into agreements with up to 5 States or localities to participate in the planning, design, development and implementation of a longitudinal child welfare data base, and to reimburse the State or locality for associated expenditures as an expenditure for data collection and information retrieval under title IV-E.

The Secretary must assure that each longitudinal data base: (1) includes information on the receipt by children and their families of child protective services, services designed to strengthen and preserve families, foster care and adoption services, and other services made available by the agency; (2) to the extent feasible, includes information on the receipt of services, or placement of children, through the mental health or juvenile justice agencies; (3) includes only data that are reliable and developed using uniform definitions and methodologies; and (4) to the extent appropriate, is implemented with the State foster care and adoption data collection and information retrieval system.

Under the agreement, the Secretary is obligated to pay the State or locality, for a 3-year period, 90 percent of the costs of planning, designing, developing, implementing and operating the data base. The matching rate will convert to 50 percent after the 3-year period for these activities.

Effective date.—Date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that provisions applying to the Commission are amended to apply to the Secretary. Further, up to 4 States or localities may apply, and the three-year enhanced match will equal 70, rather than 90, percent.

Effective date.—Date of enactment.

d. Child separation guidelines study

HOUSE BILL

The Commission will conduct a study designed to answer the following:

(1) How do the criteria for removal of children from the home, and the tools for assessing the risk to the child if not removed from the home, vary from State to State? In considering this question, the Commission should examine the decision-making process at the caseworker level in at least 3 States, which represent high, low and average placement rates. The study should also examine other factors that can affect placement rates like State laws and policies, child welfare agency interpretations of reasonable efforts, and the tendency to place or not place children according to economic incentives from various State and Federal funding sources.

(2) What guidelines should be used to assess risk and to determine the need for removal and what kind of training would ensure consistent application of these guidelines? The study should include a review and compilation of all current research in this area.

Effective date.—Date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, modified to require the Secretary to conduct the study, rather than the Commission.

Effective date.—Date of enactment.

3. Other research and evaluations

(Section 403 of House bill)

a. Study of risks to foster care workers

HOUSE BILL

The Secretary may use funds authorized under section 426 to conduct a study, under contract with an independent research organization, to assess the prevalence and nature of safety risks to workers in the child welfare system. The study shall provide empirical information regarding the actual incidence of violence or harassment, types of child welfare workers most at risk, types of harm threatened or inflicted, characteristics of perpetrators, the most dangerous child welfare settings, and urban and rural differences.

Effective date.—Date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, modified to establish the provision as free-standing law, rather than a provision of the Social Security Act. The provision requiring the Secretary to conduct the study under contract with an independent research organization is deleted. Such sums as necessary are authorized.

Effective date.—Date of enactment.

b. National workload study

HOUSE BILL

The Secretary, under contract with an organization or organizations with demonstrated experience in the field of workload measurement for human services agencies, may use funds authorized under section 426 to conduct a three-year national workload study to examine methodologies for measuring the workloads of child welfare and community mental health providers.

The study must examine and document which methodologies are currently used to measure caseworker and supervisor workloads; develop general standards for workload measurement and workload size; apply and validate the standards for workload measurement and workload size; and develop a software program to permit individual agencies to use appropriate methodologies for measuring workload.

The Secretary must consult with an advisory body in planning and carrying out the study.

Effective date.—Date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, modified to establish the provision as free-standing law, rather than a provision of the Social Security Act. The language including community mental health workers in the study is deleted. Such sums as necessary are authorized.

Effective date.—Date of enactment.

c. Evaluation of foster parent recruitment, training and retention efforts

HOUSE BILL

The Secretary, under contract with an independent research organization, may use funds authorized under section 426 to evaluate foster parent recruitment and retention strategies and the effect of foster parent training programs on retention of foster parents. The study must identify successful recruitment techniques and recommend steps that could be taken at the Federal, State or local level to improve foster parent recruitment, training and retention.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, modified to establish the provision as free-standing law, rather than a provision of the Social Security Act.

Effective date.—Date of enactment.

4. Child welfare demonstrations

PRESENT LAW

No provision.

HOUSE BILL

(a) The Secretary is required to authorize demonstration projects in five areas to test the effect of innovative child welfare practices.

Demonstration funds are authorized for four years beginning in fiscal year 1994, at funding authorizations totaling $15 million in each fiscal year. The Secretary will determine how the funds are distributed between the four project areas with a requirement that at least one project in each is undertaken. At least two projects must be undertaken in the culturally sensitive and special needs demonstration described in item 2. The project areas are described below.

(1) *Expeditious permanent placement of children* (Section 404 of House bill).—The Secretary may make up to 3 grants to States or localities to conduct projects designed to:

review statutes, administrative and judicial procedures, and agency legal representation that govern determinations of abandonment of children, termination of parental rights, and permanent placement of children, particularly with respect to children abandoned at or shortly after birth;

assess which of such procedures or law causes delays in permanent placement of such children or consideration of termination of parental rights;

assess the level of training of judges and child protective service workers on the issue of timeliness in these procedures;

assess the provision and the impact of coordinated comprehensive social services, particularly in relation to reunification or maintenance of families;

assess the impact of designating entities or individuals as having standing to initiate permanent placement or termination of parental rights proceedings on behalf of children in protective case or public supervision;

assess the extent to which employees currently exist who are specifically responsible for expediting the consideration of termination of parental rights or permanent placement, and the impact of such individuals on the timeliness for such considerations;

assess the success of programs which concurrently provide planning for and services to preadoptive and natural parents; and

implement new procedures or improvements that ensure more timely hearing of, and decisions on, cases of permanency planning or termination of parental rights, including (at State or local option) activities that provide additional personnel to pursue or process cases, expand the standing of foster parents and others to initiate cases, and require certain children to be placed in foster homes that are likely to become permanent adoptive homes.

States or localities will be required to submit an application to the Secretary including such information as the Secretary may require by rule, and an assurance that the project will be developed and carried out jointly with appropriate judicial administrators, and with appropriate agencies that provide services to children abandoned at or shortly after birth. In approving applications, the Secretary will ensure that grants are made to applicants whose positions on consideration of parental rights and the termination of such rights reflect the range of statutory and judicial positions taken by the States.

States or localities participating in the demonstration must also develop and carry out a plan for evaluating the effect of the demonstration. The Secretary must disseminate the results of the evaluations.

The Secretary may suspend a project upon determining that it has not been conducted in a satisfactory manner.

(2) *Culturally sensitive and special needs child welfare worker training demonstration* (Section 404 of House bill).—The Secretary shall authorize: 1) up to five institutions in four States along the United States-Mexico border to conduct demonstration projects to train eligible individuals to deliver culturally sensitive and bilingual child welfare services to residents of the border region; and 2) up to five institutions to conduct projects to train eligible individuals to deliver culturally sensitive and bilingual welfare services in urban centers with a high proportion of historically unserved or underserved populations.

Under the border region demonstration, the Secretary will distribute funds through the universities and colleges in border States. These schools must consult with the State child welfare agency in order to ensure that the funds will be used for training for skills that are needed for work with disadvantaged individuals in the area of the State that borders Mexico. The application must also include a plan for placing individuals who complete the training in a family assistance agency that provides services directly to residents of the border country in which the agency is located.

Under the urban centers demonstration, the Secretary will distribute funds through colleges and universities in urban areas with a high incidence of historically unserved or underserved populations, including minorities, persons with limited English-speaking ability, populations showing a high incidence of child abuse or neglect or abandonment as determined by the Secretary, homeless individuals, people infected with HIV or in danger of becoming infected, and persons who abuse alcohol or drugs.

The training funds will be used for the training of current workers and for preparing new workers for the range of child welfare work from case management to supervisory. The Secretary shall develop criteria regarding the scope and length of the training program to ensure that training under the program adequately prepares trainees for the work to be performed by the recipients of the traineeships upon completion of the training program. The training funds may be used for tuition, room and board, travel, and other living expenses.

All recipients of the traineeships for border areas will be required to agree to complete at least one year of service in the field of child welfare at approved sites. Recipients of traineeships for urban centers must agree to serve for one year for each year of assistance or training received.

For purposes of the urban center demonstration, the Secretary shall publish a list of such urban centers in the Federal Register no later than 180 days after enactment.

(3) *Staff recruitment and retention demonstration* (Section 404 of House bill).—The bill authorizes up to 10 multi-year demonstration grants to develop and implement innovative recruitment or retention strategies for trained staff in public and private nonprofit agencies working with children and adolescents at risk of placement in out-of-home care. At least one such demonstration will be designed to expand the the capacity of minorities to provide services within their own community.

To be eligible, a State or local government agency must submit a 3-year plan for the recruitment and retention of trained direct services staff (for both public and private nonprofit agencies that contract for the care of children in the custody of public agencies). The plan must include such information as the Secretary may prescribe by rule, including a description of planned outreach activities and the steps that will be taken to encourage recruitment and retention of staff.

Agencies receiving consecutive awards must match the Federal grant by 20 percent in the second year and 25 percent in the third year. The Secretary must give priority to those projects that demonstrate inter-system cooperation among child welfare, juvenile justice, mental health or substance abuse agencies and those that test both urban and rural strategies in a variety of geographic areas.

Each State or locality conducting a project must develop and carry out a plan for evaluating the effect of the project. The Secretary will be required to disseminate the results of the evaluation.

(4) *Joint training demonstration* (Section 404 of House bill).—The bill authorizes up to 3 competitive grants to State or local government agencies to test the effect of joint training programs for child welfare, mental health, and juvenile justice staff, and for judicial personnel and judges. To receive funds a State must designate a public agency which provides services to children in the State and demonstrate that at least 2 such agencies will participate in the project by contributing financial resources, staff resources and trainees. Funds may be used only for the training of staff of public and private agencies, including supervisors, who are providing services to children or adolescents at risk of foster care or their families. The training must be designed to: (1) educate staff about

the special needs of and service programs for certain populations of children or adolescents, such as those who are sexually abused, have serious emotional disturbances, are substance abusers or have AIDS or HIV-infection; (2) coordinate the interagency delivery of services to children at risk of being placed in foster care; and (3) provide training for judges or their administrative personnel, who are authorized to make final determinations as to termination of parental rights or placement of children in either temporary or permanent situations, to determine and incorporate into their decisions factors relating to the physical, mental, and social interests of the child.

States participating in the demonstration must also develop and carry out a plan for evaluating the effect of the training. The Secretary will be required to disseminate the results of the evaluations.

Effective date.—Date of enactment.

(b) *Foster care and adoption assistance demonstration* (Section 404).—The Secretary may authorize up to 5 States to test, for up to six years, the feasibility of eliminating the AFDC and SSI eligibility requirements under the title IV–E foster care and adoption assistance programs (thereby allowing a participating State to claim Federal reimbursement under title IV–E on behalf of foster and adoptive children without regard to the income and resources of the original family).

Under the demonstration, the Secretary will enter into a three-year agreement with each participating State, under which the Secretary and the State will agree on: a new set of Federal matching rates to the State for maintenance payments and adoption assistance, child placement services, and administration and training; and a strategy for evaluating the effect of the demonstration. At the State's request, the agreement will be renewed for an additional three years on the same terms.

With respect to a State, the Secretary must agree only to a set of matching rates that he determines is likely to result in no net additional Federal costs relative to current law matching rates. Any State wishing to conduct a demonstration project must submit an application to the Secretary in such form and containing such information as the Secretary may require.

Effective date.—Date of enactment.

SENATE AMENDMENT

(a) *Demonstration to facilitate reunification of a child eligible for AFDC with his or her own family* (Section 7107 of Senate amendment).—The Secretary shall enter into an agreement with up to 6 States to conduct demonstration projects to test whether family reunification can be facilitated by allowing a family to receive AFDC for the month prior to the month in which a child returns home from foster care (in an amount which the family would be eligible or receive if the child were living in the home). For that month, States may also provide for a payment to meet special needs. The Secretary must consider all applications and must approve only those which appear likely to contribute significantly to the achievement of family reunification. Demonstration projects

must meet whatever conditions and requirements the Secretary prescribes by regulation and may last up to 3 years. No project may be conducted after January 1, 1997. States must submit a detailed evaluation to the Secretary after the project has been carried out for one year, and again when the project is completed.

(b) *Home Rebuilders demonstration* (Section 7113 of Senate amendment).—The State of New York will be allowed to conduct a 3-year deficit-neutral demonstration project aimed at facilitating the discharge of children from foster care, including the appropriate reunification of children with their families, or the adoption of children by suitable adoptive parents. In order for the demonstration to be approved, the State must agree to conduct an evaluation approved by the Secretary.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provisions regarding the expeditious permanent placement of children (up to 3 grants), culturally-sensitive and special needs child welfare worker training (up to 10 grants), and the joint training of agency staff (up to 3 grants). Authorizations for these three demonstration areas will equal $15 million annually for the period.

Effective date.—October 1, 1993.

The conference agreement also includes the foster care and adoption assistance demonstration, and the Home Rebuilders demonstration project of the Senate amendment.

Effective date.—Date of enactment.

5. Technical assistance

(Section 405 of House bill)

PRESENT LAW

Section 476(a) of title IV–E permits the Secretary to provide technical assistance to the States to assist them in developing their programs funded under title IV–E.

HOUSE BILL

Beginning in fiscal year 1993, the Secretary is required to provide technical assistance to the States in the following areas:

interpretation and implementation of titles IV–B, IV–C, and IV–E of the Social Security Act;

dissemiantion of information regarding innovative child welfare practices;

helping States to correct problems identified through Federal audits and reviews and to carry out corrective action plans resulting from the Act;

helping States implement the foster care and adoption data collection system described in section 479; and

such other matters as the Secretary may identify.

Effective date.—October 1, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

E. SOCIAL SERVICES BLOCK GRANT

(Section 301 of House bill)

PRESENT LAW

Under title XX of the Social Security Act, States are entitled to receive social services block grant funds. Available data show that protective services for children, and substitute care (i.e., foster care and other out-of-home placements) and placement services for children, account for a significant portion of expenditures under the social services block grant.

Title XX is a capped entitlement; funds are currently limited to $2.8 billion annually. The share for each State is based on its relative share of the national population.

Under current law, there is no direct pass-through of funds from the Federal Government to Indian tribes or tribal organizations.

HOUSE BILL

The entitlement ceiling is increased to $2.9 billion in each of fiscal years 1993 and 1994. In fiscal year 1998 and subsequent years, the entitlement ceiling will equal the fiscal year 1997 ceiling, adjusted annually for inflation (based on changes in the consumer price index for all urban consumers for the most recent 12-month period for which data are available).

With respect to any State, if the Secretary: receives a request from the governing body of an Indian tribe or tribal organization within the State that assistance under title XX be made directly to the tribe or organization; and determines that the tribe or organization has submitted an application for the fiscal year which meets such criteria as the Secretary may prescribe by regulation, the Secretary must reserve from the amounts that would otherwise be allotted to the State, 100 percent of the amount which bears the same ratio to the State's allotment for the fiscal year (but for a direct allocation to any tribes) as the population of Indians residing within the State on the reservation(s) of the tribe or tribal organization or on trust lands adjacent to such reservation(s) bears to the population of the State.

These amendments must not be construed to preclude an Indian tribe from entering into a cooperative agreement with the State in which the tribe is located, in order for the tribe to provide services to its membership in accordance with title XX.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

F. COMMISSION ON CHILDHOOD DISABILITY

(Section 7117 of Senate amendment)

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Secretary is directed to appoint a Commission on the Evaluation of Disability in Children, consisting of 15 members including recognized experts in relevant fields of medicine; recognized experts in psychology, education and rehabilitation, law or administration of disability programs; and other experts determined appropriate by the Secretary.

The Commission will conduct a study, in consultation with the National Academy of Sciences, on the effect of the current Supplemental Security Income definition of disability, as it applies to children under the age of 18 and their receipt of services, including the effect of using an alternative definition. The Commission will summarize the results of this study in a report due to the Committees on Finance and Ways and Means, due no later than September 1, 1994. The Commission will terminate on September 30, 1994.

CONFERENCE AGREEMENT

The conference agreement follows the Senate bill.

CONTENTS

PART II—OTHER INCOME SECURITY AND HUMAN RESOURCES PROVISIONS (SUBTITLE C OF TITLE I)

A. AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC)

	Page
1. State option to modify AFDC asset test (sec. 1303 of the House bill and sec. 7131 of the Senate amendment)	1273
2. Disregard of income and resources related to self-employment (sec. 1304 of the House bill and sec. 7132 of the Senate amendment)	1274
3. Treatment of student earnings (sec. 1305 of the House bill)	1275
4. Encouraging use of transitional child care (sec. 7134 of the House bill)	1277
5. Increase in disregard of stepparent income (sec. 7136 of the House bill)	1279
6. State option to sue retrospective budgeting without monthly reporting (sec. 7135 of the House bill and sec. 7134 of the Senate amendment)	1279
7. Review of State investment in considering quality control disallowances (sec. 7132 of the House bill)	1280
8. Delay in AFDC-UP mandate for outlying jurisdictions (sec. 7131 of the House bill and sec. 7133 of the Senate amendment)	1280

B. JOBS Program

1. Temporary increase in Federal JOBS matching funds (sec. 1301(a), (b), (c) of the House bill and sec. 7141 of the Senate amendment) 1281
2. State non-cash contribution under JOBS (sec. 1301(d) of the House bill) 1283
3. Modification of the 20-hour rule for JOBS participants (sec. 1302 of the House bill and sec. 7144 of the Senate amendment) 1283
4. Modification of work supplementation program (sec. 7143 of the Senate amendment) 1284
5. JOBS funding for Indian tribes (sec. 7142 of the Senate amendment) 1285
6. Access to funds (sec. 7134 of the Senate amendment) 1285

C. Child Support Enforcement

1. Reports to credit bureaus of persons delinquent in child support payments (sec. 7111 of the House bill and sec. 7180 of the Senate amendment) 1286
2. Additional use of Parent Locator Service information (sec. 7135 of the Senate amendment) 1287

D. Community Works Progress Demonstrations

1. Community works progress demonstration projects (sec. 7151 of the Senate amendment) 1287

E. Research and Demonstration Provisions

1. Measurement and reporting of welfare dependency (sec. 7123 of the House bill and sec. 7171 of the Senate amendment) 1294
2. Extension of demonstration to expand job opportunities (sec. 7176 of the Senate amendment) 1295
3. Extension of authorization for early childhood development projects (sec. 7121 of the House bill) 1296
4. Extension of demonstration to evaluate model procedures for reviewing child support awards (sec. 7128 of the House bill) 1296
5. Extension of National Commission on Children (sec. 7125 of the House bill and sec. 7175 of the Senate amendment) 1297
6. Extension of Commission on Interstate Child Support (sec. 7124 of the House bill) 1297
7. Secretarial report on differences in program rules (sec. 7126 of the House bill and sec. 7173 of the Senate amendment) 1298
8. Payments to certain private aid programs (sec. 7122 of the House bill and sec. 7135 of the Senate amendment) 1298

F. Supplemental Security Income (SSI)

1. Effect on SSI benefits of absence of spouse or parent due to military service (sec. 7143 of the House bill and sec. 7161 of the Senate amendment) 1300
2. SSI eligibility for children of armed forces personnel in Puerto Rico and U.S. territories (sec. 7162 of the Senate amendment) 1300
3. Definition of disability for children under age 18 (sec. 7144 of the House bill and sec. 7163 of the Senate amendment) 1301
4. Valuation of in-kind support and maintenance at time of COLA (sec. 7146 of the House bill and sec. 7164 of the Senate amendment 1301
5. Treatment of revocable burial insurance policies (sec. 7147 of the House bill) 1303

G. Other Income Security Provisions

1. Effect of failure to carry out State plan (*Suter v. Artist M*) (sec. 7104 of the House bill) 1303
2. Declaration of citizen and alien status (sec. 7137 of the House bill and sec. 7174 of the Senate amendment) 1305
3. Exclusion of certain income received by Indians from interests held in trust (secs. 7133 and 7145 of the House bill and sec. 7175 of the Senate amendment) 1306
4. Disclosure of information to Railroad Retirement Board (sec. 7151 of the House bill and sec. 7177 of the Senate amendment) 1307
5. Self-employment program (sec. 7179 of the Senate amendment) 1307

Part II—Other Income Security and Human Resources Provisions

(Subtitle C of Title I)

A. Aid to Families With Dependent Children (AFDC)

1. State option to modify AFDC asset test

Present Law

Federal law directs the State welfare agency to determine ineligible for Aid to Families with Dependent Children (AFDC) any family whose counted resources exceed $1,000, or a lower amount set by the State. The following resources are exempt from the resource limit: a home in which the family lives, an automobile (so long as the individual's ownership interest does not exceed the amount specified in regulations, which is currently $1,500, or such lower amount as the State may determine), burial plots, funeral agreements, and real property (for a limited time period) of which the family is making a good faith effort to dispose. The Secretary of HHS has given States authority to exclude from the resource limit farm machinery, livestock, and tools and equipment essential to employment, livelihood, or income. About half of the States exclude some or all of these items.

House Bill

The House bill permits States to exclude from the resource limit applicable to recipient families, assets whose combined value is not less than $1,000 and not more than $10,000 which have been retained for improving the education, training or employability (including self-employment) of a family member, or for the purchase or rental of a home, but excluding any resource (or interest therein) owned by a family member within the preceding 12 months if the resource was disposed of at less than fair market value for the purpose of establishing eligibility for AFDC.

Under the House bill, recipient status for this resource treatment would be deemed for families that received AFDC in at least one of the previous 4 months. In addition, recipient status for resource treatment would be deemed for 12 months for families that leave AFDC due to earnings.

The Secretary of Health and Human Services (HHS) would be required to report to the Congress on the need to revise the asset limit on automobiles and the extent to which a revision would increase the employability of AFDC recipients. The Secretary must, to the maximum extent possible, coordinate any revision of the asset limit on automobiles with other Federal means-tested programs.

Effective date.—October 1, 1992.

Senate Amendment

The Senate amendment permits States to exclude from the resource limit applicable to recipient families amounts (not to exceed $8,000) placed in a designated account approved by the State (such

as an individual retirement account, escrow accounts, or savings bonds) for the purpose of enabling a member of the family to attend an eligible (as determined by the State under guidelines established by the Secretary) post-secondary education institution or training program, improving the employability (including self-employment) of a member of the family by other means (such as purchase of an automobile necessary for work), or to purchase a home.

Recipient status for this resource treatment will be deemed for families that received AFDC in at least one of the previous 4 months. In addition, recipient status for resource treatment would be deemed for 12 months for families that leave AFDC due to earnings.

Any interest or income earned on the account would not be counted as income. Amounts withdrawn from these accounts and used for a non-qualifying purpose would be counted as unearned income.

The Secretary of HHS would be required to conduct a study of the use made of the provision. The study and any recommendations of the Secretary for modifications of the provision must be submitted to the Committee on Finance and the Committee on Ways and Means by January 1, 1997.

Effective date.—October 1, 1993, with respect to accounts approved on or after such date and before October 1, 1997.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with modifications to permit inclusion in a designated account of resources intended for use by a family member: (1) to attend any education or training program (eliminating the requirement that the institution or program be determined to be an "eligible" institution or program, and that the institution or program be post-secondary); and (2) in order to change residences (in accordance with regulations issued by the Secretary). For purposes of the AFDC "lump sum" rule, any nonrecurring lump sum payment that is received by an AFDC family and placed in a designated account would be disregarded. The conference agreement also incorporates the provision in the House bill requiring the Secretary of HHS to report to the Congress concerning the AFDC asset limit on automobiles.

Effective date.—October 1, 1993, with respect to accounts approved on or after such date and before October 1, 1996.

2. Disregard of income and resources related to self-employment

PRESENT LAW

AFDC statutory provisions regarding the treatment of income and resources do not distinguish between self-employed persons and other persons. Income from self-employment must be taken into account in determining eligibility and the size of the benefit. Federal regulations for AFDC define "earned income" from self-employment as the total profit from a business enterprise, farming, etc. Under the rules, total profit is calculated by comparing gross receipts with business expenses directly related to producing goods or services and without which the goods or services could not be

produced. As noted above, the Secretary of HHS allows States to exclude certain items essential to employment, livelihood or income from the resource limitation.

HOUSE BILL

The House bill requires States to exempt from the AFDC resource limitation the first $10,000 of net worth (assets reduced by liabilities) of microenterprises owned, in whole or in part, by an AFDC child or the child's caretaker relative and stipulates that only the net profit of these enterprises shall be treated as earned income of the AFDC family. It defines a microenterprise as a commercial enterprise that employs no more than five persons and is owned by one or more of its employees. Net profits of a microenterprise are defined as gross receipts minus amounts paid as principal or interest on a loan, transportation expenses, inventory costs, amounts used to buy capital equipment, cash retained by the microenterprise for future use by the business, taxes paid by reason of the business, insurance premiums for coverage of the business against loss, losses not reimbursed solely because of a deductible insurance requirement, reasonable costs of obtaining one automobile needed for the business, and "the other expenses of the business." The bill requires States in which 3 or more percent of adult AFDC recipients elect to participate in microenterprise activities to include a microenterprise program as part of the Job Opportunities and Basic Skills Training (JOBS) program; other States may include microenterprise programs in the JOBS program. It also requires States to ensure that caseworkers advise AFDC recipients of the option of microenterprise, and encourage interested recipients to participate in microenterprise programs.

The House bill amends the requirement for the Secretary to submit recommendations for JOBS performance standards by requiring that the recommendations be adjusted with respect to microenterprises. It requires the Secretary to conduct a study to identify administrative and bureaucratic barriers that impede the development of microenterprises and, not later than one year after enactment, to report the results of the study to the Committee on Ways and Means and the Committee on Finance.

Effective date.—October 1, 1992.

SENATE AMENDMENT

The Senate amendment is the same as House bill, except that it makes the provision a State option, specifies that the special rules for counting resources may not apply with respect to a family for a period longer than 2 years, and does not require a study by the Secretary of HHS.

Effective date.—October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with an effective date of October 1, 1993.

3. Treatment of student earnings

PRESENT LAW

States are required by Federal law to disregard certain earned income when determining the amount of benefits to which a recipient family is entitled. States must disregard all of the earned income of a dependent child receiving AFDC who is a full-time student or a part-time student who is not a full-time employee and is attending a school, college, university, or vocational training course. States may disregard all or part of the earned income of a dependent child who is a full-time student and who is applying for AFDC, if the State elects to exclude the earnings of the child in determining whether the family's total monthly income is below the eligibility ceiling, 185 percent of the AFDC need standard. States also have the option of disregarding income derived from Job Training Partnership Act (JTPA) programs by a dependent child applying for or receiving AFDC (there is a 6-month limit on the disregard of earned income, and the Secretary has authority to limit the amount of earnings disregarded). Further, in determining whether the family meets the gross income test (185 percent of need), States may disregard earnings of a child who is a full-time student, but only for 6 months.

HOUSE BILL

The House bill exempts any earnings of a child who is a full-time student or a part-time student who is not a full-time employee, and the income derived by a child from a JTPA program, from the resource test and from consideration in the gross income test (185 percent of need). It also mandates that all States disregard income derived from a JTPA program by a child applying for or receiving AFDC in such amounts and for such period of time as the Secretary determines in regulations, and eliminates the 6-month limit on the disregard. It further provides that the earnings disregards apply also to teen parents under the age of 20, by specifying that in the provisions about treatment of student earnings the term "dependent child" includes "a child (whether or not married) who has not attained the age of 20 years."

Effective date.—October 1, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement requires the disregard from income of the earnings of any child either applying for or receiving AFDC who is a full-time student, or a part-time student not working full time, as well as the earnings of youths participating in a JTPA program. The earnings and JTPA income of all students (both full and part-time) would also be disregarded for purposes of the 185 percent income eligibility rule. The 6-month limit on the disregard of JTPA income would be repealed.

The AFDC resources rules would be amended to require the disregard of such earnings of full and part-time students and income of JTPA participants as are specified in the State plan. The State would have authority to specify both the amount of earnings to be disregarded and the conditions under which they are to be disregarded.

The above disregards would also apply to a teen parent who would be a dependent child but for the fact that the teen is not living with a caretaker relative. This would include a teen parent who meets the current law AFDC age limit for a dependent child, and who is a full or part-time student, or who is participating in a JTPA program.

In addition, the conference agreement provides that, notwithstanding any other provision of law, no reduction will be made in the amount that would otherwise be paid to a State for purposes of Federal matching, and no State shall be penalized under provisions of section 404 of the Social Security Act, by reason of the State's decision to waive, prior to April 1, 1993, the recovery of overpayments, or the collection of any related penalty, arising from the accrual of savings (not in excess of $6,000) by an AFDC child. This provision only applies with respect to excess savings that the State agency learned about before the date of enactment, and thereafter found that (1) the savings were the result of the earnings of the child; (2) the child was a full-time student throughout the time that the savings (together with those of all other family members) exceeded $1,000; (3) the earnings were saved for the purposes of furthering the child's education, and (4) there were no evidence of fraud or intent to conceal the savings on the part of the caretaker relative.

Effective date.—The provisions making changes in rules for student earnings are effective April 1, 1993. The provision relating to excess savings of a child that the State agency learned about prior to the date of enactment is effective upon enactment.

4. Encouraging use of transitional child care

PRESENT LAW

The Family Support Act of 1988 requires States to pay for child care for families who lose AFDC eligibility due to increased hours of, or increased income from, employment, if it is determined that care is necessary for an individual to accept or retain employment. The assistance is limited to a 1-year period after the last month in which a family becomes ineligible for AFDC. To be eligible for transitional child care (TCC), a family must have received AFDC in at least 3 of the 6 months immediately before the month in which they became ineligible for AFDC. Families must contribute to the cost of care according to a State-established sliding fee scale.

The statute requires States to inform families of their potential eligibility for TCC when they apply for AFDC and during the period that they receive AFDC. The regulations add that families must be informed of TCC eligibility at the time of redetermination and at the time they become ineligible for AFDC. Notification must be in writing, and orally as appropriate, and must include informa-

tion on the steps families must take to be eligible for the program. The regulations require families to request TCC and provide relevant information to States for determining eligibility. States are granted discretion in establishing application requirements; written applications are not required. States employ a wide range of information dissemination and application procedures.

House Bill

The House bill directs the Secretary of HHS to develop an appropriate methodology for determining what proportion of eligible children are using TCC assistance and to report to Congress on his findings within 6 months after the date of enactment.

States are required to: (1) establish TCC information procedures for AFDC caseworkers; (2) develop information materials describing the program that are written in a clear and simple manner and that are easily recognizable as child care materials; and (3) include, in any notice of AFDC termination sent to a family, information notifying the family of its potential eligibility for TCC assistance, steps that it must take to be eligible for the program, and the family's rights and responsibilities under the program.

The House bill provides that families who lose AFDC eligibility due to loss or reduction of the child care disregard are also eligible for TCC.

Effective date.—October 1, 1992.

Senate Amendment

No provision.

Conference Agreement

The conference agreement modifies the House bill to require that the General Accounting Office (rather than the Secretary of HHS) develop methodology for determining TCC use, and to provide that a State shall make a good faith effort to develop clear and simple child care information materials. The conference agreement does not include the House provision making families eligible for TCC if the lose AFDC eligibility because of loss or reduction of the child care disregard. It eliminates the requirements with respect to TCC notices to be sent upon AFDC termination (because this notice requirement is already in present law). The conference agreement also allows States to waive the requirement that a family contribute to the cost of transitional child care, if the family's income is at or below the poverty level. In addition, a State agency may provide transitional child care to a family that has not requested it if the family is eligible for such care and agrees to receive it.

Effective date.—January 1, 1993.

5. Increase in disregard of stepparent income

PRESENT LAW

Effective in July 1963, Federal law required the AFDC agency to disregard "reasonable" work expenses when counting the earned income of AFDC applicants and recipients. The 1981 Omnibus Budget Reconciliation Act (P.L. 97-35) replaced the reasonable work expense deduction with a standard work expense disregard of $75 monthly (for full-time employment). In 1981, Congress required that a portion of the income of the stepparent of an AFDC applicant or recipient, even in States that did not hold all stepparents to be financially responsible for stepchildren, must be deemed available to the stepchild; and it then extended the $75 disregard to stepparent earnings. In 1988, effective October 1, 1989, the standard work expense disregard was increased from $75 to $90 per month for AFDC applicants and recipients, but not for stepparents living with AFDC-eligible children.

HOUSE BILL

The House bill increases the earnings disregard for stepparents to $90 monthly. This amount of earnings would not be counted in determining the eligibility and benefit amounts of AFDC applicants and recipients.

Effective date.—October 1, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

6. State option to use retrospective budgeting without monthly reporting

PRESENT LAW

Under current law, States may choose whether or not to use retrospective budgeting for AFDC (i.e., determining AFDC benefits based on the family's income and circumstances in a prior month, rather than the current month.) However, States are allowed to use retrospective budgeting only in cases where the family is required to report monthly on income, resources, family composition, and other relevant information. States may require families to report monthly but choose not to apply retrospective budgeting procedures to those families.

HOUSE BILL

Under the House bill, States would decide, with respect to categories of families, whether or not to use monthly reporting, retrospective budgeting, or a combination of the two. Thus unlike present law, States could use retrospective budgeting for a category of families that is not required to report monthly.

Effective date.—October 1, 1992.

SENATE AMENDMENT

Same as House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

7. Review of State investment in considering quality control disallowances

PRESENT LAW

Under the Food Stamp Act, the Secretary of Agriculture must review State plans for new investments in improved administration in deciding whether to adjust quality control sanctions, and the Secretary is allowed to reduce sanctions that would otherwise be imposed based on those plans.

The AFDC quality control program does not include comparable specific authority to adjust sanctions based on State investments in improved administration.

HOUSE BILL

In determining whether to settle, adjust, compromise, or waive an AFDC quality control disallowance against a State, the House bill requires the Secretary of HHS to (1) review the State's plans for new investments in activities to improve program administration to reduce payment errors, and (2) take the State's plans into account as the Secretary considers appropriate.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the provision is the House bill.

8. Delay in AFDC-UP mandate for outlying jurisdictions

PRESENT LAW

The Family Support Act of 1988 included a requirement that any State AFDC plan make AFDC available to needy dependent children of unemployed parents (for at least 6 out of 12 months). The amendment was effective for the States on October 1, 1990, and takes effect for Puerto Rico, Guam, the Virgin Islands and American Samoa on October 1, 1992. (American Samoa, however, does not participate in the AFDC program). Unlike States, these outlying areas are subject to limitations on payments for AFDC and related programs.

HOUSE BILL

The House bill delays the effective date from the requirement under the Family Support Act that Puerto Rico, Guam, the Virgin

Islands, and American Samoa implement an AFDC-unemployed parent program to October 1, 1994.

SENATE AMENDMENT

The Senate amendment delays the requirement for implementation of the Unemployed Parent program in Puerto Rico, Guam, the Virgin Islands, and American Samoa until such time as the limitations on Federal matching payments to these jurisdictions for purposes of making AFDC maintenance payments are repealed.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

B. JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM (JOBS)

1. Temporary increase in Federal JOBS matching funds

PRESENT LAW

The Family Support Act of 1988 provided for replacement of the Work Incentive (WIN) program with a new Job Opportunities and Basic Skills Training (JOBS) program. The legislation provides Federal matching funds to the States through a capped entitlement mechanism aimed at assuring each State its share of Federal entitlement dollars. The amount of the entitlement is $600 million in fiscal year 1989, $800 million in 1990, $1 billion in 1991, 1992, and 1993, $1.1 billion in 1994, $1.3 billion in 1995, and $1 billion annually thereafter.

The Federal match is 90 percent for expenditures up to the amount allotted to the States for the WIN program in fiscal year 1987 ($126 million for all States). Of additional amounts, the Federal match for non-administrative costs and personnel costs for full-time JOBS staff varies by State, but is at least 60 percent and at most 79.99 percent (the Medicaid maximum matching rate) in fiscal year 1992; for other administrative costs the match is a flat 50 percent.

In fiscal year 1991, States obligated approximately $600 million of the $1 billion entitlement. For fiscal year 1992, CBO projects that States will obligate $660 million, two-thirds of the available Federal funds. OMB estimates that States will obligate $750 million in fiscal year 1992.

HOUSE BILL

The House bill contains the following provisions with respect to JOBS funding and matching:

Carryover of funds from fiscal year 1991: The House bill makes available for obligation by the States $100 million (approximately one-fourth) of the JOBS entitlement funds left unobligated for fiscal year 1991. States would have 1 year after the date of enactment to obligate these "carryover" funds, and would have to liquidate the obligations within 2 years after the date of enactment. No State match would apply to the carryover funds. The funds would be allocated to each State based on its relative share of JOBS ex-

penditures for fiscal year 1991. States would be required to apply these 100 pecent Federal funds to the JOBS program.

Enhanced match for fiscal year 1993: the bill subjects each State to the current law matching rates under the JOBS progam for expenditures in fiscal year 1993 up to the State's fiscal year 1991 expenditure level (the latter number calculated not to include any fiscal year 1991 funds carried over into fiscal years 1992 and 1993). JOBS expenditures in fiscal year 1993 that are in excess of the State's 1991 expenditure level would be matched at a higher Federal rate (90 percent), up to the State's JOBS cap.

Carryover of funds from fiscal years 1992 and 1993: The House bill makes available for obligation by the States (for fiscal years 1993 and 1994, respectively) 50 percent of the entitlement funds left unobligated for fiscal year 1992, and 100 percent of the funds left unobligated for fiscal year 1993. These "carryover" funds, now projected at $170 million and $250 million, respectively, would be allocated among the States based on their relative shares of JOBS expenditures for fiscal year 1991. Carryover funds would be eligible for the enhanced 90 percent matching rate in fiscal year 1993, but the Federal match for carryover funds would revert to the variable rate of current law in fiscal year 1994.

The requirement that States target at least 55 percent of their JOBS expenditures on long-term AFDC recipients is eliminated for fiscal year 1993.

SUMMARY OF JOBS FUNDING PROPOSALS

Fiscal year	Allocation basis	Amount	Federal match
1992	State share of fiscal year 1991 expenditures.	$100 million	100 percent
1993	State share of fiscal year 1991 expenditures.	50 percent of unused fiscal year 1992 funds.	90 percent
1994	State share of fiscal year 1991 expenditures.	100 percent of unused fiscal year 1993 funds.	60–83 percent (CL rate)

SENATE AMENDMENT

The Senate amendment increases the Federal matching rates on Federal funding above the WIN allocation by 15 percentage points in fiscal year 1993, 10 percentage points in 1994, and 5 percentage points in 1995. In addition, it increases the cap on funding for fiscal years 1993 and 1994 by $100 million (to $1.1 billion in 1993 and $1.2 billion in 1994). A maintenance of effort provision would require that State and local funds expended for the costs of operating a JOBS program be maintained at their prior year levels.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment modified to provide for an increase in Federal matching of 15 percentage points in 1993, 12 percentage points in 1994, and 4 percentage points in 1995.

2. State non-cash contribution under JOBS

PRESENT LAW

Federal JOBS funds are allocated among the States in two parts: (1) each State receives an amount equal to its fiscal year 1987 WIN allotment; and (2) remaining JOBS funds are allocated on the basis of each State's relative share of adult Aid to Families with Dependent Children (AFDC) recipients. For the WIN-equivalent sum of each State's JOBS allocation, the Federal matching rate is 90 percent, and the law provides that States may pay their 10 percent share "in cash or in kind, fairly evaluated." For remaining JOBS funds, the Federal matching rate varies among States. The statute does not allow a State's match for the second component of its JOBS funds to be in kind.

HOUSE BILL

The House bill increases the share of JOBS matching funds that States could provide in kind. It raises the sum that could be matched with noncash contributions, fairly evaluated, from 100 percent of the WIN-equivalent allocation to 125 percent of that allocation.

Effective date.—The House provisions applies to expenditures on or after October 1, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the provision in the House bill.

3. Modification of the 20-hour rule for JOBS participants.

PRESENT LAW

In order to be eligible for an enhanced Federal matching rate of at least 60 percent, State JOBS programs must achieve stated participation rates. Regulations use a 20-hour weekly standard to measure participation, but provide that States may count as participants the largest number of persons whose combined and averaged weekly hours equal or exceed 20. In this calculation, persons are counted if they attend at least 75 percent of the scheduled hours of activity in a month.

HOUSE BILL

For purposes of calculating JOBS participation rates, the House bill gives States the option, either on a case-by-case basis or in a uniform manner, of (1) considering each hour of classroom instruction of an individual satisfactorily participating in educational activities as two hours of JOBS participation, or (2) counting as JOBS participants full-time students who maintain a grade point average that is not below the minimum required by their educational institution. Under the second option, to be treated as a full-

time enrollee a person would have to be enrolled for the number of credit hours that the institution regards as those of a full-time student.

SENATE AMENDMENT

For purposes of calculating JOBS participation rates, the Senate amendment provides that each hour of classroom instruction of an individual who is enrolled in a degree program offered by an institution of higher education is to be considered 2 hours of participation in the JOBS program.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, modified to direct the Secretary to issue regulations specifying any other education or training programs that may also qualify to be treated in this same manner. Only those programs that require substantial outside classroom preparation would be allowed to qualify.

4. Modification of work supplementation program

PRESENT LAW

Title IV-F of the Social Security Act provides for two kinds of work programs for AFDC recipients. Under the work supplementation program, a State may reserve the sums that would otherwise be payable to participants in AFDC and use those funds to provide and subsidize jobs as an alternative to the AFDC grant. Jobs may be provided to an AFDC recipient either by the AFDC agency or by any other employer. In practice, States have generally used the work supplementation program to subsidize wages of recipients who take jobs with private employers.

Under the Community Work Experience program (CWEP), a State may require an individual to work in a public job in exchange for the welfare grant. To calculate the maximum number of required hours of work, the family's AFDC benefit is divided by the greater of the Federal minimum wage or the applicable State minimum wage.

Under both programs, recipients may not be assigned to any established unfilled position vacancy.

HOUSE BILL

No provision.

SENATE AMENDMENT

For the work supplementation program, the Senate amendment repeals the prohibition against assigning an individual to an unfilled position vacancy. Assignments to work supplementation positions would have to be in the private sector.

Effective date.—The Senate amendment applies to assignments made on or after October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

5. JOBS funding for Indian tribes

PRESENT LAW

The Family Support Act of 1988 provides Federal funding for JOBS programs administered by Indian tribes whose applications for funding have been approved by the Secretary of HHS. The formula for funding each program is based on the number of adult members of the Indian tribe that receive AFDC. This formula excludes those Indians who live on the Indian reservation but belong to another tribe.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that all Indians who live on the reservation, regardless of whether they are members of the tribe, are to be counted in determining the tribe's allocation of funds.

Effective date.—October 1, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Access to funds

PRESENT LAW

There is no provision in the statute directing States as to the kinds of organizations that are to have access to JOBS funds.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that not later than April 1, 1993, each State is required to provide assurance that local education agencies, public or private agencies or organizations, community-based organizations, correctional education agencies, post-secondary educational institutions, and institutions that serve disadvantaged adults will be provided access to Federal funds provided under this part, in accordance with regulations issued by the Secretary.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment. The JOBS statute currently provides that in selecting service providers, the State agency shall take into account appropriate factors which may include past performance in providing similar serv-

ices, demonstrated effectiveness, fiscal accountability, ability to meet performance standards, and such other factors as the State may determine to be appropriate.

C. Child Support Enforcement

1. Reports to credit bureaus of persons delinquent in child support payments

Present Law

The Child Support Enforcement Amendments of 1984 required State child support enforcement agencies to provide information regarding the amount of overdue support owed by an obligor residing in the State to any consumer reporting agency, as defined under the Fair Credit Reporting Act, upon the request of that agency, if the arrearage exceeds $1,000. If the amount of overdue support is less than $1,000, the State may choose whether or not to report the delinquency.

The information may not be made available to the consumer reporting agency until notice of the proposed action has been sent to the obligor, the obligor has been given a reasonable opportunity to contest the accuracy of the information and all procedural due process requirements of the State have been fulfilled. Also, a fee, not to exceed the cost of furnishing the information, may be imposed on the requesting consumer agency by the State.

House Bill

The House bill requires State child support enforcement agencies to report monthly the names of obligors whose child support payments are 2 or more months in arrears and the amounts of the arrearage to consumer reporting agencies.

Such information could not be made available to a consumer reporting agency if: (1) the State determined that the agency lacked capacity to make systematic and timely use of the information; and (2) it did not furnish evidence satisfactory to the State that it conforms to the definition of a "consumer reporting agency" under Federal law.

Effective date.—October 1, 1993.

Senate Amendment

The Senate amendment requires State child support enforcement agencies to periodically report the names of obligors who are at least 2 months delinquent in the payment of support and the amount of the delinquency to consumer reporting agencies. The present law requirement that the amount of the delinquency must exceed $1,000, and the requirement for notice and due process are retained. The provision relating to payment of a fee by the credit reporting agencies would be repealed.

Information could not be made available to a consumer reporting agency if: (1) the State determined that the agency lacked capacity to make systematic and timely use of the information; and (2) it did not furnish evidence satisfactory to the State that it con-

forms to the definition of a "consumer reporting agency" under Federal law.

Effective date.—The Senate amendment is effective October 1, 1993. However, if the Secretary of HHS determines that a State is unable to comply with the amendment, the State would be exempt from compliance until the State establishes an approved automated data processing and information retrieval system, or until October 1, 1995, whichever is earlier.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

2. Additional use of Parent Locator Service information

PRESENT LAW

The Department of Health and Human Services operates a Parent Locator Service to obtain and transmit information as to the whereabouts of any absent parent when such information is to be used to locate the parent for the purpose of enforcing support obligations owed by the parent.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires the Secretary of HHS to enter into an agreement with the Attorney General under which the services of the Parent Locator Service shall be made available to the Office of Juvenile Justice and Delinquency Prevention, upon its request, for the purpose of locating any parent or child in order to: (1) enforce any State or Federal law with respect to the unlawful taking or restraint of a child; or (2) make or enforce a child custody determination. The Parent Locator Service may charge no fee for these services.

Effective date.—October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

D. COMMUNITY WORKS PROGRESS DEMONSTRATIONS

1. Community works progress demonstration projects

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a Community Works Progress demonstration program under Title XI of the Social Security Act. The Secretary of Health and Human Services (HHS), in consultation with the Secretary of Labor, would administer the program. The Secretary would have to award grants to three urban projects and two projects that are statewide. Demonstrations could last up to 4 years. Both public and private nonprofit organizations would be eligible to apply for grants.

The term "project" is defined to mean an activity that results in a specific, identifiable service or product that would not otherwise be done with existing funds.

Approvable projects include ones that the Secretary determines would serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and child care.

For each of fiscal years 1994, 1995, 1996, and 1997, each entity that has an application for a grant approved by the Secretary would be entitled to payments in an amount equal to its expenditures to carry out the demonstration. The amounts authorized are $100 million in each of fiscal years 1994, 1995, 1996, and 1997. No more than 25 percent of funds could be used for capital costs.

In awarding grants, the Secretary is directed to consider the following factors: unemployment rate; proportion of population receiving public assistance; per capita income; degree of involvement and commitment demonstrated by public officials; the likelihood that the project will be successful; the contribution that the project is likely to make toward improving the life of residents in the community; geographic distribution; the extent to which the project will emphasize the development of projects encouraging team approaches to work on real, identifiable projects; the extent to which private and community agencies will be involved; and such other criteria as the Secretary may establish.

Eligible participants include individuals who are receiving, eligible to receive, or at risk of becoming eligible to receive, Aid to Families with Dependent Children (AFDC); individuals receiving, eligible to receive, or (while participating in a project) who have exhausted, unemployment compensation; and noncustodial parents of children who are receiving AFDC.

State agencies administering a JOBS program may assign JOBS participants to participate in a project if such participation does not conflict with the requirements of the JOBS program, and the individual is referred in accordance with JOBS procedures.

Participants who are receiving benefits under the unemployment compensation and AFDC programs would receive, in addition to those benefits, compensation in an amount equal to 10 percent of the average (as estimated by the organization conducting the project) of the amount of AFDC and unemployment compensation paid to recipients of these benefits in the area served by the project. Agencies administering AFDC or unemployment compensation benefits are allowed to transfer funds to the project to enable participants to receive compensation in the form of a single check

for wages rather than in the form of separate benefit checks. Individuals not receiving either unemployment compensation or AFDC would be compensated in an amount equal to the Federal minimum wage, or the applicable State minimum wage, whichever is greater.

Individuals receiving AFDC may not be required to work on a monthly basis more than the number of hours determined by dividing the family's monthly assistance amount by the greater of the Federal or applicable State minimum wage. If an individual chooses to work any additional hours, the individual must be paid for each additional hour an amount equal to the greater of the Federal or applicable State minimum wage.

Individuals receiving unemployment compensation who choose to participate in a project must agree to work on a weekly basis the number of hours determined by dividing the amount of the weekly unemployment compensation received by the individual by the greater of the Federal or State applicable minimum wage.

The Secretary could approve an application that provided for an alternative method of compensation so long as it did not reduce the amount received by a participant below the minimum wage and assured a bonus payment to AFDC and unemployment compensation beneficiaries who participate in the project.

In order to assure that each individual will have time to seek alternative employment or to participate in an alternative employability enhancement activity, no individual could participate for more than 32 hours a week.

Individuals participating in projects would be eligible for assistance to meet necessary costs of transportation and child care, as well as necessary costs of uniforms or other work materials.

Each participant must be tested for basic reading and writing competence and must be furnished counseling and instruction if they fail a basic competency test.

Approved demonstrations would be required to ensure that the project would not result in displacement of currently employed workers and will not impair any contracts for services or any collective bargaining agreements existing at the time the project commences. Also required would be assurances of consultation with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the project. Organizations conducting a community works progress project would be required to establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals, including grievances regarding proposed placements of participants in the project. Grievances must be filed not later than 1 year after the date of the alleged occurrence of the event that is the subject of the grievance.

A hearing on any grievance must be held no later than 30 days after the filing of the grievance, and a decision must be made not later than 60 days after the grievance is filed.

In the event that the decision on a grievance is adverse to the party who filed, or 60 days after the grievance is filed if no decision has been reached, the party who filed would be able to submit the

grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested party.

If a grievance is filed regarding a proposed placement of a participant, such placement shall not be made unless it is consistent with the resolution of the grievance.

Remedies for a grievance filed include suspension or termination of payments for a project and prohibition of the placement with respect to which a grievance has been filed.

In approving grants, the Secretary is required to assure that there would be an evaluation of the effectiveness of each project in meeting the project's goals and objectives. Up to 3 percent of the amount granted to each entity could be used for this purpose. Interim reports to the Finance and Ways and Means Committees would be due annually, with a final report due 4 years after the first grant is awarded.

The Secretary could suspend or terminate a project if the Secretary determines that an organization conducting a project has failed to comply with the law or terms and conditions agreed to by the organization and the Secretary.

The Secretary is required to publish the grant application notice no later than January 1, 1993.

Within 60 days after enactment, the Secretary of HHS, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development, is required to establish a task force to identify any Federal funds (in addition to the funds authorized to operate the projects) that may be used in community works progress projects, and to identify any modifications to existing policies or procedures that would facilitate the implementation of the projects. The task force is to be composed of 1 representative each from the Departments of HHS, Labor and HUD. The task force is required to submit a report to the Secretaries of these departments and to the Congress with any findings and recommendations that it may have.

Effective date.—Upon enactment.

CONFERENCE AGREEMENT

The conference agreement modifies the Senate amendment. It establishes a Community Works Progress demonstration under Title XI of the Social Security Act. The Secretary of Labor, in consultation with the Secretary of Health and Human Services, would administer the program. The Secretary would have to award grants to four urban projects and two projects that are statewide. Demonstrations could last up to 3 years. States and governmental units in urban areas would be eligible to apply for grants. These entities may operate projects or allocate funds for project operation to other governmental units, or public or private nonprofit organizations.

The term "project" means an activity that results in specific identifiable services or products that otherwise would not be carried out with existing funds. A project may supplement, but not supplant, existing activities. Maintenance of fiscal effort in the JOBS program by the State would be required.

Projects included must serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development, welfare, recreation, public safety, and child care.

For each of fiscal years 1993, 1994, and 1995, each entity that has an application for a grant approved by the Secretary would be entitled to payments in an amount equal the lesser of actual or approved annual expenditures to carry out the demonstration. The amounts authorized are $60, $70, and $70 million in fiscal years 1993, 1994, and 1995, respectively. Funds not obligated by the Secretary in one year remain available for use in subsequent years. No more than 3 percent of these funds may be retained by the Secretary for administration.

In awarding grants, the Secretary is directed to consider the same factors listed in the Senate amendment, except the likelihood that the projects will be successful was deleted because it was too vague and geographic distribution was clarified.

Projects shall provide employment and employment-related services to noncustodial parents who are not employed and at least two months in arrears on their court-ordered child support payments, recipients or persons at risk of being recipients of the Aid to Families with Dependent Children-Unemployed Parent (AFDC-UP) program, and recipients or persons at risk of being recipients of Aid to Families with Dependent Children (AFDC). Enrollment priority goes first to volunteers from any of the three groups, then to the noncoustodial parents, then the AFDC-UP group, followed by the AFDC group. The conferees hope that most of the enrollees will be volunteers and noncustodial parents.

State agencies administering a JOBS program may assign JOBS participants to participate in a project if such participation does not conflict with the requirements of the JOBS program, and the individual is referred in accordance with JOBS procedures.

The labor standards described in section 142 and 143 of the Job Training Partnership Act apply except: (1) Participants who are eligible for Medicaid benefits would continue to receive them instead of employer-provided health benefits, where applicable. (2) Some projects may not be subject to the "prevailing wage" requirements in Sections 142(a)(3)(C) and 143(d) of the JTPA.

Nonduplication and nondisplacement requirements replicate the requirements contained in subsections (a) and (b) of section 177 of the National and Community Service Act of 1990. The Senate amendment applied these provisions by reference.

Not more than 10 percent of the grant may be used for administrative costs. Not less than 70 percent of the amount of a grant must be used to provide compensation and supportive services to participants in a project.

Depending on whether the projects can pay the "prevailing wage or only 125 percent of the minimum wage, noncustodial parents who are at least two months in arrears in their child support payments are eligible to be paid no less than either (1) the prevailing wage, or (2) the higher of 125 percent of the applicable Federal or State minimum wage, for each hour the participant works in the project and the participant receives education, job training, and job search services, not to exceed 8 hours. In no case, however, would

the rate of pay be less than 125 percent of the Federal or applicable State minimum wage.

Depending on the type of projects in which they are enrolled, AFDC recipients may not be required to work on a monthly basis more than the number of hours determined by dividing the family's monthly assistance amount by (1) the prevailing wage, or (2) the greater of 125 percent of the Federal or applicable State minimum wage. In no case, however, would the rate of pay be less than 125 percent of the applicable minimum wage. If an individual chooses to work any additional hours, the individual must be paid for each additional hour an amount equal to either (1) the prevailing wage, or (2) the greater of 125 percent of the Federal or applicable State minimum wage.

AFDC recipients who work off their benefits will receive a bonus equal to 25 percent of the average amount of monthly AFDC benefits in their State.

The Secretary may approve an application that provides for an alternative method of compensation so long as it does not reduce the amount received by a participant below the amount payable under the basic compensation method described above.

All wages would be exempt from countable income for all Federally-assisted means-tested programs, including the Higher Education Act of 1965.

As in the Senate amendment, in order to assure that each individual will have time to seek alternative employment or to participate in an alternative employability enhancement activity, no individual may participate in work on a project for more than 32 hours per week.

Individuals participating in projects shall receive assistance to meet costs of transportation and child care, as well as necessary costs of uniforms or other work materials.

Each participant must be tested for basic reading and writing competence and must be furnished counseling and instruction if the participant fails a basic competency test. However, individuals who have been tested by an employment, education, or training program for basic reading and writing competence within one year of enrollment in a project, shall not be required to be tested.

As under the Senate amendment, the Secretary may suspend or terminate payments for a project if the Secretary determines that an organization has materially failed to comply with the requirements of this demonstration project.

As under the Senate amendment, organizations conducting a community works progress project would be required to establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals, including grievances regarding proposed placements of participants in the project. Grievances must be filed not later than 1 year after the date of the alleged occurrence of the event that is the subject of the grievance.

Remedies for a grievance filed include: (1) prohibition of the placement; (2) reinstatement of the participant to the position; (3) payment of lost wages and benefits; (4) reestablishment of other relevant terms, conditions, and privileges of employment; and (5)

equitable relief as is necessary to correct any violation or to make the participant whole.

An application for a grant to conduct a project must include: (1) a description of the type of project to be carried out; (2) a description of the objectives and performance goals of the project; (3) an agreement between the organization and the child support enforcement agency to seek court-ordered enrollment of a noncustodial parent who is not employed and is two months in arrears on his child support payments; (4) a description of a plan for managing and funding the project; (5) in the projects not required to pay the prevailing wage when that wage is applicable, written concurrence from any local labor organization representing employees in the area who are engaged in work of the same or similar character or nature as that proposed to be carried out by the project; (6) a description of formal job training and job search arrangements; (7) an assurance that the project will be coordinated with other Federally assisted education, training, and social service programs; (8) an assurance that the organization will participate in cooperative efforts among community-based agencies, local educational agencies, and local government agencies, businesses, and State agencies, to develop and provide supportive services; (9) a description of fiscal control, accounting, audit, and debt collection procedures to assure the proper disbursal of funds; and (10) a projection of the amount the organization intends to spend in each fiscal year.

The Secretary is required to publish the grant application notice no later than January 1, 1993.

The Secretary shall carry out up to four project evaluations costing no more than $6 million. It shall be based on an experimental design with random assignment between a treatment group and a control group. The Secretary shall use the data to analyze the benefits and costs of the project with particular attention to estimates of the value of the goods and services produced and differences between the payment of "prevailing wages" and 125 percent of the applicable minimum wage. A final report is due one year after the final project is completed.

As in the Senate amendment, within 60 days after enactment, the Secretary of Labor, in consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, is required to establish a task force to identify any Federal funds (in addition to funds authorized to operate the projects) that may be used in community works progress projects, and to identify any modifications to existing policies or procedures that would facilitate the implementation of the projects. The task force is to be composed of one representative each from the Departments of HHS, Labor, and HUD. The task force is required to submit a report to the Secretaries of these departments and to the Congress with any findings and recommendations that it may have.

E. Research and Demonstration Provisions

1. Measurement and reporting of welfare dependency

Present Law

National and State information on AFDC receipt and the characteristics and financial circumstances of AFDC recipients is compiled annually by the Department of Health and Human Services (DHHS), using data from the National Integrated Quality Control Review System (NIQCS).

House Bill

The House bill requires the Secretary of HHS and the Secretary of Agriculture jointly to develop indicators and rates related to the level of welfare dependency in the United States, and predictors that are correlated with welfare dependency. The Secretary is also required to assess the data needed to report annually on these indicators, rates, and predictors, including the ability of existing data collection efforts to provide the data, and any additional data collection needs.

Not later than 2 years after the date of enactment, the Secretaries of HHS and Agriculture are required to submit an interim report with conclusions resulting from the development and assessment described above to designated Committees of Congress (House: Ways and Means, Education and Labor, Agriculture, and Energy and Commerce; Senate: Finance, Labor and Human Resources, and Agriculture, Nutrition, and Forestry).

A temporary Advisory Board on Welfare Dependency is created, composed of 12 members with equal numbers appointed by the House of Representatives, the Senate, and the President. The Board would be composed of experts in the fields of welfare research and statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues. The Board will provide advice and recommendations to the Secretary on the development of indicators, rates, and predictors of welfare dependence, and the identification of data collection needs and existing data collection efforts. It will also provide advice on the development and presentation of the annual welfare dependency report.

The Secretary is required to prepare an annual report on welfare dependency that attempts to identify indicators, rates, and predictors of welfare dependency and trends in dependency, and provide information and analysis on the causes of dependency. Annual reports are required to include numerical goals for recipients and expenditures for Aid to Families with Dependent Children (AFDC), food stamps, and Supplemental Security Income (SSI). Annual reports would be submitted to the seven committees named above. The first report is due not later than 3 years after the date of enactment.

Senate Amendment

The Senate amendment differs from the House bill by making the Secretary of Health and Human Services (in consultation with

the Secretary of Agriculture) responsible for development of welfare indicators, rates, and predictors, and for submitting an interim report and annual welfare dependency reports. In addition, under the Senate amendment the Advisory Board terminates as soon as it completes specific duties, but in any case prior to the submission of the first annual report by the Secretary of HHS.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

This amendment to the Social Security Act establishes an annual report on welfare dependency in the United States. It declares that "it is the policy of the United States to strengthen families, to ensure that children grow up in families that are economically self-sufficient and to underscore the responsibility of parents to support their children." To this end "the Federal government should help welfare recipients as well as individuals at risk of welfare dependency to improve their education and job skills, to obtain access to necessary support services, and to take such other steps as may assist them to meet their responsibilities to become financially independent." The annual report is designed "to aid in lowering welfare dependency by providing the public with generally accepted measures of welfare dependency so that it can track dependency over time and determine whether progress is being made in reducing welfare dependency and enabling families to be self-sufficient." This section incorporates an Act introduced earlier based on the precedent of the Employment Act of 1946, which declared a national policy in that regard, and marked the acceptance of a previously disputed social responsibility.

2. Extension of demonstration to expand job opportunities

PRESENT LAW

The Family Support Act of 1988 established a demonstration project under which not fewer than 5 nor more than 10 nonprofit organizations were authorized to conduct demonstration projects to create employment opportunities for certain low-income individuals. The amount authorized for these grants is $6.5 million for each of fiscal years 1990, 1991, and 1992.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment continues the demonstration project for 2 additional years. Before January 1, 1994, the Secretary is required to issue a final report to the Congress, including an evaluation of the projects and any recommendation the Secretary determines to be appropriate.

CONFERENCE AGREEMENT

The conference amendment follows the Senate amendment.

3. Extension of authorization for early childhood development projects

PRESENT LAW

The Family Support Act of 1988 authorized up to 10 demonstration projects to test and evaluate the effect of early childhood development programs on families receiving AFDC and participating in Job Opportunities and Basic Skills Training (JOBS), and authorized $6 million for each of fiscal years 1990, 1991, and 1992 for these and two other categories of projects. No funds were appropriated for the early childhood development projects for fiscal years 1990 through 1992.

HOUSE BILL

The House bill extends the authorization for early childhood development projects through fiscal year 1997. It authorizes to be appropriated for these projects up to $3 million for each of fiscal years 1993 through 1997.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

4. Extension of demonstration to evaluate model procedures for reviewing child support awards

PRESENT LAW

The Family Support Act of 1988 required the Secretary of HHS to make agreements with each of four States that submitted applications to conduct demonstration projects to test and evaluate model procedures for reviewing child support award amounts. The demonstration projects were scheduled to run for a period of 2 years beginning September 30, 1989. The Secretary must pay a participating State an amount equal to 90 percent of the reasonable costs incurred by the State in conducting a demonstration project.

HOUSE BILL

The House bill extends the demonstration period for 1 year, to October 1, 1992.

Effective date: Upon enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House provision.

5. Extension of National Commission on Children

PRESENT LAW

The National Commission on Children was established in 1987 as a bipartisan commission to develop recommendations for public and private sector policies to improve opportunities for children and youths to become healthy, secure, educated, economically self-sufficient, and productive adults. Its final report, "Beyond Rhetoric: A New American Agenda for Children and Families," was issued on June 24, 1991. The Commission is still in the process of developing information to inform the public about the status of children and on proposals to address their needs through public and private sector programs.

HOUSE BILL

The House bill extends the terms of service of the members of the National Commission on Children to December 31, 1992.

SENATE AMENDMENT

The Senate amendment extends the terms of service of members of the National Commission on Children to December 31, 1992 and provides additional time, until March 31, 1993, for the Commission staff to close down the Commission's operations.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Extension of Commission on Interstate Child Support

PRESENT LAW

The Commission on Interstate Child Support was authorized by the Family Support Act of 1988. Since 1990, members of the Commission have been developing recommendations to improve the enforcement of child support in cases where the custodial parent and the noncustodial parent reside in different States. The Commission issued its final report on August 1, 1992.

On July 3, 1992, the Unemployment Compensation Amendments of 1992 (P.L. 102–318) extended the due date for the Commission's report to August 1, 1992 and the life of the Commission to September 30, 1992.

HOUSE BILL

The House bill extends the authorization of the U.S. Commission on Interstate Child Support from July 1, 1992 to September 30, 1992 and extends the Commission's deadline for filing its report with Congress from May 1, 1992 to August 1, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House provision. This provision has already been enacted as part of P.L. 102-318.

7. Secretarial report on differences in program rules

PRESENT LAW

The AFDC, Medicaid, and Food Stamp programs serve many of the same persons, yet the eligibility policies and required procedures used by each program vary.

HOUSE BILL

The House bill requires that the Secretary of HHS and the Secretary of Agriculture jointly report to the President and Congress about differences in rules of the AFDC, Food Stamp, and Medicaid programs by no later than 6 months after the date of enactment of the legislation. The report is to include: what rules govern the programs, how these rules differ, which rules require statutory action to achieve uniformity, and which rules could be made more uniform without statutory amendment.

The program rules to be evaluated in the Secretaries' report include rules related to administrative procedures, definitions of countable income, definitions of income disregards and exemptions, quality control sanctions and incentives, incentives to combat fraud, work and training requirements and programs, and the child support enforcement program. The Advisory Committee on Welfare Simplification and Coordination is directed by the House bill to take account of the Secretaries' joint report on differences in program rules. Income eligibility levels would be excluded from the report.

SENATE AMENDMENT

The Senate amendment is the same as the House provision, except that it does not include reference to the child support enforcement program, and does not contain a requirement that the Advisory Committee on Welfare Simplification and Coordination take account of the Secretarial report. It also includes a requirement (not in House bill) for evaluation of policies on strikers.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

8. Payments to certain private aid programs

PRESENT LAW

No provision.

HOUSE BILL

The House bill requires reimbursement of a qualified private demonstration program (defined as a program operated and evalu-

ated in the same manner as The New Hope Project, Inc., a private, not-for-profit corporation in Milwaukee, Wisconsin) with some of the aggregate savings in AFDC and Medicaid payments that are estimated by the Secretary of HHS to result from operation of the program. The payment per participant would be the lesser of $20 per day or 95 percent of estimated daily average aggregate savings. In order for a program to qualify, it has to provide low-income residents with employment, wage supplements, child care, health care, and counseling and training for job retention or advancement. It also is required to submit an annual report to the Secretary of HHS.

Effective date.—The House provision is effective on the first day of the first calendar quarter that begins after the date of the enactment.

SENATE AMENDMENT

The Senate amendment allows the Secretary to provide for a demonstration project for a qualified program to be conducted in Milwaukee, Wisconsin. A qualified program is defined as a program operated by the New Hope Project, Inc., a private not-for-profit corporation in Milwaukee, which offers low-income residents employment, wage supplements, child care, heath care, and counseling and training for job retention or advancement.

The Secretary is required to make payments for no more than 20 quarters, in an amount no greater than the aggregate amount that would otherwise have been payable to the State with respect to participants in the program, in the absence of the program, for cash assistance and child care under Title IV-A and medicaid, and for administrative expenses for these programs.

The operator of the program must provide in the application that the following conditions will be met: (1) the operator will implement an evaluation plan designed to provide reliable information on the impact and implementation of the program, that will include adequately sized groups of participants and control groups assigned at random; (2) the operator will develop and implement a plan addressing the services and assistance to be provided by the program, the timing and determination of payments from the Secretary to the operator of the program, and the roles and responsibilities of the Secretary and the operator with respect to meeting specified requirements; (3) the operator will specify a methodology for determining expenditures to be paid to the operator by the Secretary, with assistance from the Secretary in calculating the amount; and (4) the operator will issue an interim and final report on the results of the evaluation of the program at such times as required by the Secretary.

Effective date.—The Senate amendment is effective on the first day of the first calendar quarter that begins after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, modified to make clear that reimbursement to the program shall be *equal* to the aggregate amount that would otherwise be payable

to the State in the absence of the program, and to provide that expenses of the program relating to evaluation will qualify for 50 percent Federal matching.

F. Supplemental Security Income (SSI)

1. Effect on SSI benefits when spouse or parent is absent due to military service

Present Law

If the parent or spouse of family members who receive Supplemental Security Income (SSI) payments resides in the household and then is required to be absent from the household because of an active military duty assignment, this absence can cause the family members to lose benefits or eligibility for SSI. This is because absence from the household causes more of the income of the absent member to be attributed to those receiving SSI in the household. Also, if the military duty assignment involves armed conflict, the service member may receive hazardous duty pay. This additional income, if sent back to the household, can also reduce the SSI payments or cause ineligibility of family members.

House Bill

The House bill (1) requires that a spouse or parent who is absent from an SSI household solely because of a military assignment is deemed to be still living in the household, and (2) excludes certain hazardous duty pay from countable income under the SSI program.

Effective date.—The House provision is effective on the first day of the second month that begins after the date of enactment.

Senate Amendment

Same as House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. SSI eligibility for children of armed forces personnel in Puerto Rico and U.S. territories

Present Law

SSI benefits are generally continued for children who are U.S. citizens and who accompany their parents on U.S. military assignments to foreign countries. Benefits do not continue if the parents are stationed in Puerto Rico or in the territories or possessions of the United States.

House Bill

No provision.

SENATE AMENDMENT

The Senate amendment continues SSI benefits to children who are U.S. citizens if they received SSI benefits in the United States and then accompany their parents on U.S. military assignment to Puerto Rico or territories or possessions of the United States.
Effective date.—October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, effective upon enactment.

3. Definition of disability for children under age 18 applied to all individuals under age 18

PRESENT LAW

The SSI law provides a definition of disability applicable to children. The SSI program defines a child as someone who is under age 18, except for individuals under age 18 who are married or are heads of household.

HOUSE BILL

The House bill extends the SSI childhood definition of disability to any person under age 18.
Effective date.—October 1, 1992.

SENATE AMENDMENT

Same as House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment, effective with respect to disability determinations made on or after enactment.

4. Valuation of in-kind support and maintenance when there is a COLA

PRESENT LAW

A person who lives in the household of another person and receives in-kind support and maintenance from the householder must have his or her Federal SSI benefit reduced by one-third of the Federal benefit. Regulations provide for a "presumed maximum value" for measuring in-kind support and maintenance for a person who lives in his or her own household and receives in-kind support and maintenance, or lives in another person's household and receives food or shelter, but not both. This "presumed maximum value" is one-third of the Federal SSI benefit plus $20 per month (the amount of the unearned income exclusion from countable income).

Under the 2-month retrospective accounting principle that generally governs SSI benefit calculations, SSI benefits are determined after looking at the income in the second preceding month. In this

system, an individual's countable income in the second month before the current month is used to determine the SSI benefit for the current month.

As a result of this use of retrospective accounting, the presumed value of in-kind support is not increased at the time an annual cost-of-living adjustment (COLA) to SSI benefits takes effect. Each time SSI benefits are increased by a COLA, SSI benefits for January and February are calculated using the increased value, but the reduction in benefits for receipt of support and maintenance in-kind is made on the lower pre-COLA November and December Federal SSI benefit. A 2-month lag occurs between the receipt of the COLA and the adjustment for increased value of in-kind support. A beneficiary will receive a COLA in January and then in March, when the post-COLA Federal SSI benefit is used for valuing the reduction for in-kind support and maintenance, SSI benefits will drop.

HOUSE BILL

The House bill requires that the current month's Federal benefit amount be used in determining the value of in-kind support and maintenance in calculating the current month's Federal benefit to be paid. This would eliminate the unintended benefit increase for January and February following a COLA and the offsetting reduction for March.

Effective date.—The House provision is effective January 1, 1994 (i.e., it applies to benefits paid after calendar year 1993).

SENATE AMENDMENT

The Senate amendment is the same as the House Bill except for effective date.

Effective date.—The Senate amendment is effective January 1, 1993 (i.e., it applies to benefits paid after calendar year 1992).

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

The conferees are aware that, in the past, some States have cut their State SSI supplements at the same time that the Federal SSI COLA took effect in January. This has created confusion among SSI recipients, who thought their total SSI benefits would increase by the amount of the Federal COLA only to discover that their benefits did not increase by as much, or did not increase at all.

If this should happen in the future, the conferees want the Commissioner of Social Security to explain to affected beneficiaries that their SSI benefits are smaller than expected because of a State decision, not a Federal government decision. The conferees instruct the Commissioner to provide affected recipients with such a written explanation whenever SSI benefits in a State will not increase by the full percentage increase in the Federal COLA because the State has cut its Federally administered State supplement by an amount that offsets part or all of the Federal COLA.

5. Treatment of revocable burial insurance policies

PRESENT LAW

In determining program eligibility, the SSI program does not count as a resource the value of a burial space purchased and "held for" the purpose of providing a place of burial for an SSI recipient or his or her immediate family. Burial spaces that are owned outright, or are purchased with irrevocable life insurance policies or through irrevocable trusts are therefore excluded from resources. However, some States prohibit or place limits on the value of irrevocable life insurance policies that provide for the purchase of burial spaces and other burial items. The SSA General Counsel has ruled that the law does not permit exclusion from SSI resources of the value of a revocable life insurance policy for purchase of a burial space, on the grounds that the space is not "held for" an individual because the policy can be changed or canceled.

HOUSE BILL

The House bill requires that revocable burial insurance policies be treated in the same manner as irrevocable burial insurance policies for the purpose of determining SSI resources and eligibility.

Effective date.—The House provision would apply to calendar months beginning after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the provision in the House bill.

G. OTHER INCOME SECURITY PROVISIONS

1. Effect of failure to carry out State plan (Suter v. Artist M.)

PRESENT LAW

Many of the principal Federal social welfare programs are established under the "State plan" titles of the Social Security Act of 1935, as amended. These programs include Aid to Families with Dependent Children (AFDC) (Title IV–A), Child Welfare Services (Title IV–B), Child Support and Establishment of Paternity (Title IV–D), Foster Care and Adoption Assistance (Title IV–E), and Medicaid (Title XIX). Under these titles, as a precondition of funding, each participating State is required to develop a written "State plan" that meets certain statutory requirements in order to be approved by the Secretary of the Department of Health and Human Services (HHS).

The Adoption Assistance and Child Welfare Act of 1980 amended the Social Security Act to require States to provide in their title IV–E plans that, in the case of each child, reasonable efforts will be made (a) prior to the placement of the child in foster

care, to prevent or eliminate the need for removal of the child from his home, and (b) to make it possible for the child to return to his home (Sec. 471(a)(15)).

On March 15, 1992, the U.S. Supreme Court held in *Suter v. Artist M.*, that the "reasonable efforts" clause does not confer a federally-enforceable right on its beneficiaries, nor does it create an implied cause of action on their behalf. In rendering its opinion, the Court also stated that although section 471(a) does place a requirement on the States, that requirement "only goes so far as to ensure that the States have a plan approved by the Secretary which contains the 16 listed features."

HOUSE BILL

The House bill amends Title XI of the Social Security Act to provide that "each individual shall have the right not to be denied any service or benefit under this Act as a result of the failure of any State to which Federal funds are paid under a title of this Act that includes plan requirements to have a plan that meets such requirements, or to administer such a plan in accordance with such requirements."

The House committee report states that the provision does the following: "(1) responds to the recent Supreme Court decision in *Suter v. Artist M.,* which dramatically limited the ability of program beneficiaries to enforce the State plan titles of the Social Security Act; (2) preserves private rights of action as they existed before the *Suter v. Artist M.* Supreme Court decision; and (3) reaffirms that the State plan titles of the Social Security Act impose binding obligations on participating States to comply with the requirements of the Act."

The committee report further states: "The purpose of this provision is to assure that individuals who have been injured by a state's failure to comply with the state plan requirements are able to seek redress in the federal courts to the extent they were able to prior to the decision in *Suter v. Artist M.* The provision does not alter the rules of statutory construction that the courts used prior to *Suter v. Artist M.* The provision does not alter the finding in *Suter v. Artist M.*, that the 'reasonable efforts' provision, without further direction, is too vague to be enforceable in such an action. It only alters that portion of *Suter v. Artist M.* suggesting that failure of a state to comply with a state plan provision is not litigable as a violation of federal statutory rights."

Effective date.—This House provision applies to actions pending on the date of enactment and to actions brought on or after that date.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement amends title XI of the Social Security Act by adding a new section that reads as follows:

"In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter v. Artist M.* that section 471(a)(15) of the Act is not enforceable in a private right of action."

While adopting a different formulation, the conference agreement follows the intent of the House bill provision, which is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to the decision in *Suter v. Artist M.*, while also making clear that there is no intent to overturn or reject the determination in *Suter* that the reasonable efforts clause of title IV-E does not provide a basis for a private right of action.

The conferees do not believe that *Suter v. Artist M.* would be applied to the unemployment compensation program.

2. Declaration of citizen and alien status

PRESENT LAW

Section 1137(d) of the Social Security Act specifies that States must require, as a condition of eligibility for the AFDC, medicaid, unemployment compensation, and food stamp programs, a declaration in writing by each adult individual (or, in the case of a child, by another individual on the child's behalf), stating whether the individual is a citizen or national on the U.S., and if not, that the individual is in a satisfactory immigration status. Under AFDC policy, a newborn child may not be eligible until a declaration has been signed.

Legislation enacted in 1990 overrode the provision of sec. 1137 with respect to the food stamp program. Under that legislation, one adult member of the food stamp household is required to sign, under penalty of perjury, a written declaration as to the citizenship or satisfactory immigration status of all household members, and by regulation, a declaration for newborn children is allowed no later than the next redetermination of eligibility.

HOUSE BILL

With respect to the AFDC program, the House bill allows one adult member of an AFDC family to sign, under penalty of perjury, a declaration as to the citizenship or satisfactory immigration status of all family members.

Effective date.—October 1, 1992.

SENATE AMENDMENT

With respect to all programs included in the section 1137(d) requirement, the Senate amendment allows one adult member of a family or household to sign a declaration, under penalty of perjury, on behalf of other adults in the household. In addition, in the case of a newborn child, it permits an adult to sign a declaration on behalf of the child no later than the date of the next redetermination of the eligibility of the family or household.

Effective date.—October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

3. Exclusion of certain income received by Indians from interests held in trust

PRESENT LAW

Income received by Indians from tribally-owned trust lands is exempt from consideration under Federal welfare programs, such as AFDC and Supplemental Security Income (SSI). This income is distributed on a per capita basis to tribal members, but the land is owned by the tribe as a whole and managed for the tribe's benefit by the Bureau of Indian Affairs.

Individually-owned trust or restricted Indian lands are excluded from resources in applying the resource test under AFDC and SSI. However, income derived from leases on individually-owned trust or restricted Indian lands and paid to an individual is included in countable income when determining eligibility and benefit amounts for these cash welfare programs.

HOUSE BILL

The House bill exempts income up to $2,000 per year paid to an individual derived from leases on individually-owned trust or restricted Indian lands in determining eligibility and benefit levels under the AFDC and SSI programs.

Effective date.—Upon enactment.

SENATE AMENDMENT

The Senate amendment is similar to House bill, but provides for an annual exempt amount of $4,000 for purposes of all Social Security Act programs, or any other Federal or federally assisted program.

Effective date.—October 1, 1992.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the effective date is changed to January 1, 1993.

4. Disclosure of information to Railroad Retirement Board

PRESENT LAW

The Railroad Retirement Board (RRB) has access to returns and return information regarding taxes imposed under the Railroad Retirement Tax Act for purposes of the administration of the Railroad Retirement Act (RRA), but it is not authorized to receive returns and return information filed under the Railroad Unemployment Repayment Tax provisions. (The Railroad Unemployment Repayment Tax was imposed to repay loans from the Railroad Retirement Account obtained by the Railroad Unemployment Insurance Account.) In addition, there is no specific authority to disclose RRA information for purposes of the administration of the Railroad Unemployment Insurance Act (RUIA).

HOUSE BILL

The House bill amends the Internal Revenue Code to enable the RRB to obtain Railroad Unemployment Repayment Tax information.

SENATE AMENDMENT

Same as House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

5. Self-employment program

PRESENT LAW

The Omnibus Budget Reconciliation Act of 1987 required the Secretary of Labor to conduct self-employment demonstration projects for a period of three years in up to 3 States. States were required to pay any costs that exceeded the cost of unemployment insurance benefits which would have been paid in the absence of the experiments. The States of Washington and Massachusetts have been operating demonstrations.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the Secretary of Labor may authorize no more than 10 States to establish and operate self-employment programs if the Secretary determines that:

(1) the State program does not result in any cost to the Unemployment Trust Fund in excess of the cost that would be incurred if the State had not participated in a self-employment program;

(2) the State program provides unemployment benefits only to individuals who are entitled to compensation under

State law (without regard to any disqualification resulting from self-employment and without regard to any State law relating to availability for work, active search for work, or refusal to accept work);

(3) the State program contains a process to target individuals who have been permanently separated from their jobs or do not expect to be recalled to their jobs;

(4) benefits are available only to individuals who are likely to receive compensation for the maximum number of weeks that such compensation is available under the State law during a benefit year;

(5) the aggregate amount of benefits payable to an individual with respect to any benefit year is limited to not more than 80 percent of the maximum amount of regular unemployment compensation payable to the individual for the benefit year; and

(6) the aggregate number of individuals receiving benefits under the State program does not at any time exceed 5 percent of the number of individuals receiving compensation under the State law at such time.

If the Secretary authorizes a self-employment program, the State may use the State unemployment fund to provide cash benefits, exclusive of the expenses of administration, to individuals participating in the program. The benefits must be used to assist participating individuals in becoming self-employed.

States must report annually to the Secretary on the number of individuals who participate in the program, the number of individuals who are able to develop and sustain businesses, the operating costs of the program, compliance with program requirements, and any other relevant aspects of program operations requested by the Secretary.

Not later than December 31, 1995, the Secretary must report to the Committee on Finance and the Committee on Ways and Means with respect to the operation of the State programs. The report shall contain the Secretary's recommendations regarding establishment of a permanent self-employment program as part of the regular unemployment compensation programs.

Effective date.—The Senate amendment is effective upon enactment. It expires September 30, 1996.

Conference Agreement

This conference agreement does not include the Senate amendment.

CONTENTS

Amendments Relating to Old-Age, Survivors, and Disability Insurance Programs (Subtitle A of Title IX)

Page

1. Misuse of symbols, emblems, or names related to the Social Security Administration and other organizations (sec. 7002 of the House bill and sec. 7178 of the Senate amendment) ... 1309
2. Telephone access to local offices (sec. 7003 of the House bill) ... 1311
3. Coverage exclusion for election workers (sec. 7004 of the House bill) ... 1312
4. Coverage of non-cash agricultural wages (sec. 7005 of the House bill) ... 1313

5. Use of Social Security numbers for jury selection (sec. 7006 of the House bill and sec. 7001 of the Senate amendment)..... 1314
6. Optional coverage of police officers and firefighters (sec. 7007 of the House bill)..... 1315
7. Limited exemption from SECA taxation for certain ministers who worked in Canada (sec. 7008 of the House bill and sec. 7005 of the Senate amendment)..... 1315
8. Disregard of windfall elimination provision in cases involving totalization benefits (sec. 7009 of the House bill)..... 1316
9. Exclusion of military reserve pensions from government pension offset and windfall elimination provision (sec. 7010 of the House bill)..... 1317
10. Rounding of contribution/benefit bases and earnings test exempt amounts (sec. 7011 of the House bill)..... 1318
11. Repeal of facility-of-payment provision (sec. 7012 of the House bill and sec. 7002 of the Senate amendment)..... 1319
12. Application of subsequent entitlement guarantee of maximum family benefits (sec. 7013 of the House bill)..... 1320
13. Disclosure of information for epidemiological research (sec. 7014 of the House bill)..... 1321
14. Definition of disability for children (sec. 7003 of the Senate amendment)..... 1322
15. Penalties for unauthorized disclosure of information (sec. 7004 of the Senate amendment)..... 1322
16. Time allowed for late filing of annual earning reports (sec. 7006 of the Senate amendment)..... 1323
17. Tightening of rules applicable to representative payees (sec. 7179 of the Senate amendment)..... 1323
18. Technical corrections relating to Social Security (sec. 6201 of the House bill and sec. 6201 of the Senate amendment)..... 1324
19. Improvements in the availability and use of death information..... 1325
20. Misuse of symbols, emblems, or names related to the Department of the Treasury (sec. 7201 of the House bill)..... 1326

HUMAN RESOURCES PROVISIONS (SUBTITLE B OF TITLE IX)

1. Repeal of provision inadvertently included in OBRA 1990 (secs. 6211 and 7161(b) of the House bill and sec. 6211 of the Senate amendment)..... 1326
2. Corrections related to income security and human resources provisions of OBRA 1990 (sec. 6212 and 716(c), (d), (e), (f), and (h) of the House bill and (sec. 6212 of the Senate amendment)..... 1327
3. Correction related to section 8006 of OBRA 1989 (sec. 6213 and 7162(b) of the House bill)..... 1327
4. Technical corrections related to human resource and income security provisions of OBRA 1989 (sec. 7162(a) and (c) of the House bill)..... 1327
5. Amendment related to section 1310(d)(2) of OBRA 1990 (sec. 6214 of the House bill)..... 1327
6. Elimination of obsolete provisions relating to treatment of the EITC (sec. 7141 of the House bill and sec. 7165 of the Senate amendment)..... 1328
7. Redesignation of certain provisions (sec. 7142 of the House bill and sec. 6213 of the Senate amendment)..... 1328

AMENDMENTS RELATING TO OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAMS (OASDI) (SUBTITLE A OF TITLE IX)

1. Misuse of symbols, emblems or names related to the Social Security Administration, Health Care Financing Administration and other programs and organizations

PRESENT LAW

In 1988, Congress enacted a provision prohibiting the use of words, letters, symbols and emblems of the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) in a manner that the user knows or should know would convey the false impression that such an item was approved, endorsed, or authorized by the Social Security Administration, the

Health Care Financing Administration or the Department of Health and Human Services, or that the user has some connection with, or authorization from, these agencies.

The law permits the Secretary of Health and Human Services (HHS) to impose civil monetary penalties not to exceed $5,000 per violation or, in the case of a broadcast or telecast, $25,000 per violation. The total amount of penalties which may be imposed is limited to $100,000 per year.

Amounts collected by the Secretary are deposited as miscellaneous receipts of the Treasury of the United States.

House Bill

The House bill changes the prohibition against unauthorized use of words, symbols and emblems in the following ways:

(a) eliminates the annual cap on penalties;

(b) includes the use of names, letters, symbols or emblems of the Department of Health and Human Services as protected items;

(c) defines a "violation," with regard to mailings, as each individual piece of mail in a mass mailing;

(d) adds a further prohibition against the use of the names or symbols in a manner that "reasonably could be interpreted or construed as conveying" a relationship to SSA, HCFA, or HHS;

(e) repeals the present law requirement that the Department of Health and Human Services obtain a formal declination from the Department of Justice before pursuing a civil monetary penalty case under this provision;

(f) provides that penalties collected by the Secretary for violations of this provision will be deposited in the Social Security Old-Age and Survivors Insurance Trust Fund;

(g) stipulates that no person may reproduce, reprint, or distribute for a fee any form, application, or other publication of the Social Security Administration unless such person has obtained specific written authorization for such activity in accordance with regulations prescribed by the Secretary;

(h) provides that any determination of whether there is a violation of this provision shall be made without regard to a disclaimer; and

(i) requires the Secretary of HHS to report annually to the Congress detailing the number of complaints of deceptive practices received by SSA, the number of cases in which SSA sent a notice of violation of this section to an individual requesting that the individual cease misleading activities, the number of cases referred by SSA to the HHS Inspector General (IG), the number of investigations undertaken by the HHS IG, the number of civil monetary penalties formally assessed by the HHS IG in a demand letter, the total amount of civil monetary penalties assessed during the year, the total amount of civil monetary penalties deposited in the OASI trust fund during the year, and the number of hearings requested pursuant to this provision and their disposition.

Effective date.—The changes approved by the House apply with respect to violations occurring after the date of enactment.

SENATE AMENDMENT

The Senate amendment is similar to the House bill. It does not make the following changes included in the House bill:

(a) the prohibition against the use of the names, symbols, or emblems of the Department of Health and Human Services;

(b) the provision that penalties collected by the Secretary for violations of this provision would be deposited in the Old-Age and Survivors Insurance Trust Fund;

(c) the stipulation that no person may reproduce, reprint, or distribute for a fee any form, application, or other publication of the Social Security Administration unless it has obtained specific written authorization for such activity;

(d) the provision that a determination of whether an item is in violation of this provision shall be made without regard to the inclusion in the item of a disclaimer of affiliation with the U.S. Government or an agency thereof.

The Senate amendment also extends the applicability of the provision to the names, letters, and symbols of the Supplemental Security Income and Medicaid programs.

Effective date.—The Senate amendment applies with respect to violations occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that, as in the Senate amendment, the protections are extended to the names, letters, and symbols of the Supplemental Security Income and Medicaid programs. In addition, penalties deposited in the Old-Age and Survivors Insurance Trust Fund would be limited to penalties for misuse of the names, letters, and symbols of the Social Security Administration (SSA). It is the intention of the conference managers that the restriction on reproducing forms for a fee will not apply to individuals (e.g., certified public accountants) who may use these forms in the course of providing routine services to their clients.

2. Clarification of statutory requirement for public telephone access to local Social Security offices

PRESENT LAW

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) requires the Social Security Administration (SSA) to: (a) maintain telephone access to local social security offices at the level generally available as of September 30, 1989, and (b) relist in local telephone directories the numbers of local offices that had been removed from the directories. P.L. 101-508 also required the General Accounting Office (GAO) to report to the Congress on the level of public telephone access to local offices following enactment of these requirements.

In September 1991, the GAO reported that SSA has generally complied with the requirement that it relist local office telephone

numbers. It also reported that general inquiry lines to the offices targeted by P.L. 101–508 had decreased by 30 percent, or 766 lines, below the level that existed on September 30, 1989.

HOUSE BILL

The House bill adds the following sentence to the current statutory requirement that SSA maintain telephone access at the level generally available on September 30, 1989:

> "In carrying out the requirements of the preceding sentence, the Secretary shall reestablish and maintain in service the same number of telephone lines to each such local office which were in place as of such date, including telephone sets for connections to such lines."

The House bill also requires that SSA maintain its toll-free service provided by the national 800 number at a level at least equal to that in effect on June 18, 1992.

Effective date.—The provision relating to local telephone access is effective as if included in section 5110(a) of P.L. 101–508. The provision relating to toll-free service is effective upon enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that the benchmark date for maintenance of toll-free service will be the date of enactment rather than June 18, 1992. The conference agreement requires that the Social Security Administration reinstall the required number of telephone lines by no later than March 1, 1993. It is the intention of the conference managers that the General Accounting Office (GAO) make an independent determination of the number of telephone lines to each SSA local office as of March 1, 1993, and report its findings to the Committee on Ways and Means and the Committee on Finance no later than May 1, 1993.

3. Social Security exclusion for election workers

PRESENT LAW

Election workers who earn less than $100 per year are subject to three exclusions from coverage under social security: (a) at the option of a State, they may be excluded from the State's voluntary social security coverage agreement with the Secretary of HHS; (b) they are excluded from the requirement that State and local workers hired after March 31, 1986, pay the hospital insurance portion of the social security tax; and (c) they are excluded from the requirement in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508) that State and local workers who are covered neither by a State or local retirement system nor by a voluntary agreement must be covered by social security and pay social security taxes.

House Bill

Under the House bill, the three exclusions for election workers will be increased in 1993 to apply to election workers with annual earnings of up to $1,000. This amount will rise thereafter in proportion to increases in wages in the economy.

In addition, a transition rule excludes election worker earnings for the last quarter of calendar year 1992, if they do not exceed $500.

Effective date.—The increased exclusion applies to services performed by an election worker on or after January 1, 1993. The transition rule applies to services performed during the period October 1–December 31, 1992.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

4. Social Security coverage of non-cash agricultural wages

Present Law

Non-cash remuneration paid to agricultural workers is excluded from covered wages under the Social Security Act. The legislative history of this exclusion, which was enacted in 1950, indicates that it was intended to apply to such items as:

> * * * lodging, food, clothing, agricultural or horticultural commodities, or car tokens or weekly transportation passes.

In recent years, this exclusion has been applied to other remuneration arrangements. Examples are: (a) buy-back arrangements, in which farm employers pay employees with commodity storage receipts which they later redeem for cash, (b) prearranged sales, in which farm employers give workers temporary, paper possession of agricultural products such as live hogs, mink pelts, grain, or milk whose sale they have already arranged; and (c) hybrid "ownership" arrangements, in which an employer pays a worker with a portion of a commodity shipment to market and subsequently shares the proceeds from the sale.

House Bill

In general, the House bill expands the definition of wages covered by social security to include non-cash remuneration paid to agricultural workers. An exception is provided for meals and lodging furnished on the premises of the employer and, in the case of seasonal workers, temporary lodging furnished in reasonable proximity to the employer's premises. In addition, non-cash remuneration would not be covered if it is below the tax thresholds that now apply to agricultural cash wages—in general, the lesser of $150 per worker or $2,500 for the employer.

Effective date.—The House provision applies to remuneration paid after December 31, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the provision in the House bill.

5. Use of Social Security numbers for jury selection

PRESENT LAW

The Privacy Act of 1974 prohibits States from requiring that individuals provide social security numbers for identification purposes, unless the State was doing so before January 1, 1975, or the State is specifically permitted to do so under Federal law. The Social Security Act currently authorizes States to use the social security number in administration of any tax, general public assistance, and driver's license or motor vehicle registration law within its jurisdiction. Other Federal statutes authorize the State to use the social security number for certain other purposes.

Currently, State and local courts use jury source lists within their jurisdiction to select jurors. Source lists (most commonly made up of lists of licensed drivers and registered voters) are usually computer tapes merged by the courts to form one pool, or master list, from which jurors are selected.

States that are permitted under current law to collect social security numbers for purposes such as driver's licenses and voter registration are not allowed to use those social security numbers for other purposes such as refining jury selection master lists for the courts, unless the courts were using the social security number for that purpose before the Privacy Act took effect.

Current law likewise prevents States from using the social security number to compare the merged jury source lists with computerized lists of convicted felons in order to eliminate these individuals from jury pools.

HOUSE BILL

The House bill permits States that already collect and use social security numbers for purposes permitted under current law to use those numbers to eliminate duplicate names and names of convicted felons from jury source lists.

Effective date.—Upon enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that it specifies that the social security numbers to be used with respect to jury source lists must have already been collected for other authorized purposes.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Authority for optional Social Security coverage of police officers and firefighters under a retirement system

PRESENT LAW

In general, employees of State and local governments who participate in a public retirement system can be brought under social security by means of voluntary agreements entered into by the States with the Secretary of HHS.

However, the State option to provide social security coverage for police officers and firefighters who are under a public retirement system applies only in 24 States that are named in the Social Security Act. (An additional option applies with respect to firefighters only: any State may obtain coverage for them if the governor certifies that it would improve the overall benefit protection of firefighters in the coverage group and a referendum is held among the group under authorization of the State.) The Act also provides that, in the 24 named States, social security coverage can be obtained only after a State-sponsored referendum.

HOUSE BILL

The House bill extends to all States the option to provide social security coverage, under their voluntary agreements with the Secretary of HHS, to police officers and firefighters who participate in a public retirement system. The existing requirement for a referendum held under the authority of the State would continue to apply.

Effective date.—The House provision applies with respect to State requests filed after enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

7. Limited exemption from SECA taxes for American ministers who worked in Canada

PRESENT LAW

The Social Security Act authorizes the President to enter into bilateral "totalization agreements" with foreign countries that provide for coordination of the social security systems of the U.S. and the foreign country. These agreements provide for entitlement to retirement, survivors, and disability insurance based on the combination of covered work under the social security systems of both countries, and are meant to eliminate situations in which the same work is covered and subject to taxation by both countries.

The totalization agreement with Canada was entered into in 1984. Article V(7) of that agreement provides that individuals considered self-employed by the United States who are American citi-

zens but are residents of Canada are covered only under the Canadian Pension Plan.

Under the Social Security Act, an individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order is generally considered self-employed for social security payroll tax purposes and subject to SECA taxes. The Canadian social insurance program treats ministers as employees of the church rather than as self-employed individuals.

Before the 1984 totalization agreement with Canada, duly ordained and licensed ministers who were American citizens but residents of Canada were required to pay SECA taxes to the United States and social security taxes to Canada. In some cases, ministers who were American citizens but residents of Canada failed to file U.S. tax returns or pay SECA tax believing that they were not required to do so because they were paying into the Canadian Pension Plan as residents of Canada. The Internal Revenue Service has assessed taxes and penalties against those ministers who failed to file a return and pay the required taxes prior to the 1984 agreement.

HOUSE BILL

The House bill exempts ministers who failed to pay SECA taxes in the U.S. on earnings from services performed in Canada before the totalization agreement went into effect, and who were required to pay social insurance taxes in Canada on such earnings, from the payment of such taxes or related penalties owed to the United States.

In addition, the bill provides that the ministers' social security earnings records will not be credited for years in which the SECA tax was not paid.

Effective date.—The House provision is effective for individuals who meet the requirements of the statute and who file a certificate with the Internal Revenue Service within six months after the IRS issues regulations implementing this provision. The certificate shall be effective for taxable years 1979 through 1984.

SENATE AMENDMENT

Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

8. Totalization benefits and the windfall elimination provision

PRESENT LAW

The President is authorized to enter into "totalization agreements" with foreign countries. If an individual has worked under social security systems in both the U.S. and a foreign country with which the U.S. has an agreement, but has not worked long enough to qualify for a benefit, a totalization agreement allows the individual's coverage under both systems to be combined, or "totalized,"

in order for one country (or both) to pay a benefit. Benefits paid under a totalization agreement are generally prorated to reflect that the person did not work his or her whole career under the system that is paying benefits.

The windfall elimination provision (WEP) is applied to the computation of social security benefits for workers who are eligible for both social security and a pension from work not covered by social security. Under the WEP, a different benefit formula yielding a lower amount is used to calculate the worker's social security benefit. (Due to the weighting of the social security benefit formula toward workers with lower lifetime wages, workers with many years of work not covered by social security would receive a windfall in their social security benefit in the absence of the WEP.)

The WEP applies: (1) in the computation of some U.S. totalization benefits, and (2) in the computation of regular U.S. social security benefits if the individual receives a foreign totalization benefit.

HOUSE BILL

The House bill provides for disregarding the Windfall Elimination Provision in computing any U.S. totalization benefit, and in computing the amount of the regular U.S. benefit of an individual who (1) receives a foreign totalization benefit based in part on U.S. employment and (2) does not receive any other pension which is based on noncovered employment.

Effective date.—The House provision is effective with respect to benefits payable for months after October, 1992

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the provision in the House bill.

9. Exclusion of military reservists from application of the government pension offset and the windfall elimination provision

PRESENT LAW

The Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) are intended to reduce social security benefits payable to individuals who qualify for both a social security benefit and a pension based on employment not covered by social security.

The WEP reduces a worker's social security retirement or disability benefit in cases where the worker is receiving both a social security benefit and a pension based on employment not covered by social security. The WEP is designed to eliminate the potential windfall that could result from applying the weighted social security benefit formula in such cases. The weighted formula is intended to replace a higher proportion of wages for low-earning workers with long service under social security than for high-earning workers. The WEP prevents it from treating individuals who have limit-

ed years of coverage under social security as if they were lifetime low-earners.

Active military service became covered under social security in 1957. Inactive duty by reservists (such as weekend drills) became covered under social security in 1988. A pension based on either type of service (active or inactive), if performed before 1957, does not trigger the WEP. The only military pension which triggers the WEP is a pension based in whole or in part on inactive duty after 1956 and before 1988.

Under the GPO, spouse's and widow(er)'s benefits received by an individual based on his or her spouse's social security-covered work are reduced by two-thirds of the amount of any government pension to which the individual is entitled based on his or her own work in a government job not covered under social security.

In general, an individual is exempt from the GPO if the last day of his or her work in a government job was covered by social security. Thus, reservists who retired from military service before 1988 may be subject to the GPO depending on whether the last day of their duty status happened to be covered (active duty, such as two-week training duty) and therefore exempt from the GPO or not covered (inactive duty) and therefore subject to the GPO.

House Bill

The House bill provides that an individual's receipt of a pension based wholly on service performed as a member of a uniformed service, whether on active or inactive duty and whether performed prior to 1988 or not, will not trigger application of the GPO and WEP to the individual's social security benefits.

Effective date.—The House provision is effective with respect to benefits payable for months after October, 1992.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

10. Elimination of rounding distortion in the calculation of the contribution/benefit bases and earnings test exempt amounts

Present Law

The OASDI contribution and benefit base, the HI contribution base, and the social security earnings test exempt amounts are adjusted automatically each year based on a formula that reflects increases in average wages in the economy. The amounts that result from applying the formula are rounded to the nearest multiple of $300 in the case of the OASDI contribution and benefit base and the HI contribution base, and to the nearest multiple of $10 in the case of the monthly earnings test exempt amounts. Each annual increase is based on the rounded amount for the preceding year.

HOUSE BILL

The House bill designates 1992 (or any later year for which an increase other than an automatic increase is effective) as the base year to be used in calculations of the OASDI contribution and benefit base, HI contribution base, and the social security earnings test exempt amounts for all years following 1992. Rounding adjustments will be made each year to the unrounded products of the base year calculations.

Effective date.—The House provision applies to determinations of the OASDI contribution and benefit base and HI contribution base for years after 1992, and to determinations of the social security earnings test exempt amounts for taxable years ending after 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with minor, technical changes.

11. Repeal of facility-of-payment provision

PRESENT LAW

As a general rule, when an individual receiving benefits as the dependent of a worker has a deduction in his or her benefits (for example, due to the earnings test) and the Maximum Family Benefit rule applies, the withheld benefits are redistributed and paid to the other dependents. (The Maximum Family Benefit, or MFB, is a limit on the total amount of benefits which can be paid on a worker's record to the worker and his or her dependents.)

However, if all of the dependents are living in the same household, the affected individual's benefit check is not actually withheld; instead, the individual receives a notice from the Social Security Administration accompanying the benefit check. This notice explains that the beneficiary is subject to a benefit reduction and should not actually receive the amount provided in the benefit check. However, the excess benefit amount is being paid with the understanding that it is for the use and benefit of the other dependent beneficiaries. This procedure is known as the facility-of-payment provision.

In cases where all of the dependent beneficiaries are not residing in the same household, the facility-of-payment provision does not apply and the withheld benefits are redistributed and paid directly to the remaining dependents.

HOUSE BILL

The House bill repeals the facility-of-payment provision. As a result, a beneficiary who is subject to a reduction will have the appropriate amount withheld form his or her benefit, and the withheld amount will be redistributed and paid directly to the other dependents.

Effective date.—The House provision is effective for benefits for months after December, 1993.

SENATE AMENDMENT

Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

12. Application of subsequent entitlement guarantee to maximum family benefits

PRESENT LAW

A guarantee is provided for workers who receive disability benefits, then stop receiving disability benefits, and subsequently become re-entitled to benefits due to death, retirement or disability. This "subsequent entitlement guarantee" provides that the basic benefit amount (the Primary Insurance Amount, or PIA) of a worker who becomes re-entitled to benefits or dies (thereby entitling his or her survivors) cannot be less than the PIA in effect in the last month of the worker's prior entitlement to disability benefits.

Due to a drafting error in the 1977 Social Security Amendments, when this guarantee was created, the guarantee does not extend to the Maximum Family Benefit (MFB) payable on the worker's record, which is determined based upon the PIA. (The MFB is a limit on the total amount of benefits which may be paid on a worker's record to the worker and his or her dependents.) As a result, the MFB which is payable when the worker becomes re-entitled to benefits or dies may be less than the MFB payable in the last month of the worker's prior entitlement to disability benefits.

HOUSE BILL

The House bill makes a conforming change in the MFB, so that the guaranteed PIA will be the basis for calculating the guaranteed MFB.

Effective date.—The House provision is effective for the MFB of workers who become re-entitled to benefits or die (after previously having been entitled) after October, 1992.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the provision in the House bill.

13. Disclosure of Social Security Administration information for epidemiological research

PRESENT LAW

Current law generally prohibits Federal agencies from releasing personal information contained in an individual's file without the written consent of the individual unless release is required under the Freedom of Information Act (FOIA) or other statutes.

Before the 1989 Supreme Court decision *United States Department of Justice v. Reporters Committee for Freedom of the Press (Reporters Committee),* the Social Security Administration (SSA) provided personally identifiable information to epidemiological researchers under the belief that it was required to do so under the FOIA. Disclosure of personal information is required under FOIA when the public interest served by the disclosure outweighs the privacy interest served by withholding the information.

In the Reporters Committee decision, the Supreme Court restricted disclosures of personally identifiable information under FOIA, ruling that disclosure of personal information serves the public interest only when the requested information gives the public insight into the Federal government's performance of its statutory duties.

As a result of the Reporters Committee decision, SSA has discontinued the practice of disclosing information from its files to epidemiological researchers.

HOUSE BILL

The House bill requires the Social Security Administration, under certain circumstances, to disclose for epidemiological or similar research purposes personally identifiable information from SSA records specifying whether an individual is living or dead.

Under the provision, SSA is required to comply with requests for information showing whether an individual is alive or deceased if: (1) the Secretary finds that the research may reasonably be expected to contribute to a national health interest; and (2) the requestor agrees to reimburse the Secretary for providing such information and agrees to comply with limitations on safeguarding and rerelease or redisclosure of such information, on specified by the Secretary.

Effective date.—Upon enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

14. Conform Social Security definition of disability for children to the SSI definition for children

PRESENT LAW

The basic definition of disability, inability to engage in any substantial gainful activity by reason of a physical or mental impairment, is the same under the Social Security Disability Insurance program and the Supplemental Security Income (SSI) program. In the SSI program, however, the law further provides that children under the age of 18 are considered disabled if they suffer from an impairment of "comparable severity" to one that would prevent an adult from working. The Disability Insurance program has no similar provision applicable to children, although under the program there are certain limited circumstances in which a child must establish disability prior to attaining age 18.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a "comparable severity" definition of disability for children under the Disability Insurance program that is identical to the definition in the SSI program.

Effective date.—Upon enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the provision would apply to determinations of disability made on or after the date of enactment.

15. Increased penalties for unauthorized disclosure of Social Security information

PRESENT LAW

The Social Security Act contains provisions prohibiting the unauthorized disclosure of personal and other information obtained in administering the Act. The Act provides that any person who violates these provisions and makes an unauthorized disclosure can be found guilty of a misdemeanor and, upon conviction, punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both. Under the Act, these penalty provisions are also applicable to anyone who fraudulently attempts to obtain information as to the date of birth, employment, wages, or benefits, of another individual.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, unauthorized disclosure of information and fraudulent attempts to obtain personal information

under the Social Security Act are made a felony. Each occurrence of a violation will be punishable by a fine not exceeding $10,000, imprisonment not exceeding five years, or both.

Effective date.—Upon enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the provision will apply to violations occurring on or after the date of enactment.

16. Increase in authorized period for extension of time to file annual earnings report

PRESENT LAW

In general, individuals under age 70 who receive Social Security retirement or survivors benefits must file an annual earnings report with the Social Security Administration for any taxable year in which their earnings or wages exceed the annual value of exempt earnings under the Social Security earnings test. These reports are due to be filed by the same date as income tax returns, the fifteenth day of the fourth month after the close of the taxable year (normally April 15). Individuals may be granted a reasonable extension of time for filing an earnings report if there is a valid reason for delay, but not more than 3 months. A time extension for filing an income tax return may be granted for up to 4 months.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the time for which an extension may be granted for filing an earnings report is increased to 4 months.

Effective date.—Upon enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the provision is effective with respect to reports of earnings for taxable years ending on or after December 31, 1992.

17. Tightening rules applicable to Social Security and SSI representative payees

PRESENT LAW

In both the Social Security and Supplemental Income Security programs, the Social Security Administration appoints a representative payee to receive benefit payments on behalf of a beneficiary when SSA determines that the beneficiary's best interest would be served in this way. The law provides that an individual or organization cannot be a representative payee if they have been convicted of fraudulent offenses involving Social Security and SSI benefits, or have previously served as a representative payee and had their cer-

tification to receive benefits revoked because they have misused funds paid as benefits. With certain specified exceptions (e.g., a relative or a care institution), an individual or organization that is a creditor of a beneficiary cannot be that beneficiary's representative payee.

In the SSI program, an individual or an eligible spouse who has been medically determined to be a drug addict or alcoholic must be assigned and receive payment through a representative payee.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that: (1) an individual who has been convicted of a drug-related offense, a felony under Federal or State law, or a crime punishable by death or imprisonment for more than one year, shall not be appointed as the representative payee of an SSI recipient who has been medically determined to be a drug addict or alcoholic; (2) any representative payee who has misused an individual's benefit payment may be subject to a fine or imprisonment under sections 208 and 1632 of the Social Security Act; and (3) a beneficiary's creditor that is a facility licensed for the treatment of drug or alcohol abuse may serve as that beneficiary's representative payee.

Effective date.—Regulations implementing the Senate provision must be issued within 180 days of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, except that the Secretary of Health and Human Services is authorized to make exceptions, on a case-by-case basis, to the prohibition against certain individuals serving as representative payees. Also, the conference agreement does not include the penalty in the Senate amendment applicable to misuse of benefit payments by a representative payee, because such a penalty is already included in present law.

18. Technical corrections relating to Social Security

Present Law

The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) contained technical errors in provisions relating to disabled widows, representative payees, attorney fees, and advance tax transfers.

House Bill

The House bill makes technical corrections to these four provisions.

Effective date.—The House provision is effective as if it were included in OBRA 90.

SENATE AMENDMENT

Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

19. Improvements in the availability and use of death information

PRESENT LAW

Under section 205(r) of the Social Security Act, the Secretary of Health and Human Services is authorized to enter into voluntary contracts with the States for the purpose of obtaining death certificate and other related information to be used in administration of the Social Security Act. In addition, the Secretary is authorized to redisclose this information to other Federal, State, and local agencies for certain specified purposes, subject to such safeguards as the Secretary determines are necessary to prevent any unauthorized redisclosure. However, because these contracts with the States are entirely voluntary, the States are able, at their discretion, to include contract provisions preventing the Secretary from redisclosing this information to other agencies.

HOUSE BILL

No provision. (However, H.R. 3837, as passed by the House, contains a provision that is similar to the conference agreement.)

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement would prohibit a State from using an individual's Social Security account number in the administration of any drivers license or motor vehicle registration law if, within one year after the date of enactment, the State does not enter into a contract to provide death certificate and related information to the Secretary, or the State is party to a contract with the Secretary that places restrictions on the use of the death certificate and related information obtained by the Secretary from the State, except to the extent that such use is permitted to be restricted under section 205(r)(6) of the Social Security Act.

The conference agreement also requires the Secretary of Health and Human Services to conduct a study of possible improvements in the current methods of gathering and reporting death information by Federal, State, and local governments that would result in more efficient and expeditious handling of such information. By June 1, 1993, the Secretary is required to submit a written report to the Committee on Ways and Means and the Committee on Finance setting forth the results of this study, together with such administrative and legislative recommendations as the Secretary may consider appropriate.

20. Misuse of symbols, emblems, or names related to the Department of the Treasury

PRESENT LAW

There are currently no provisions in present law prohibiting the use of symbols, emblems, and names of the Department of the Treasury (and its subsidiary agencies) in connection with mailings and other solicitations.

HOUSE BILL

The House bill prohibits the use of Treasury-related words, letters, symbols, or emblems in a manner which could reasonably be interpreted or construed as conveying a false impression that such activity is connected with the Department of the Treasury or any of its subsidiary agencies. A civil penalty of up to $5,000 per violation, or in the case of a broadcast up to $25,000, would apply for violations. Each individual piece of mail or separate solicitation would be considered a separate violation. Any determination of whether there is a violation of this provision would be made without regard to the use of a disclaimer of affiliation with the Federal government. The Secretary of the Treasury, by May 1, 1994, is required to provide to the House Ways and Means and Senate Finance Committees a report on enforcement activities relating to the implementation of the provision.

Effective date.—Upon enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill. The conferees agree to clarify that the reproduction of Treasury-related public documents or publications will not, in itself, be considered as conveying a false impression that such activity is connected with the Department of the Treasury.

HUMAN RESOURCES PROVISIONS (SUBTITLE B OF TITLE IX)

1. Repeal of provision inadvertently included in OBRA 1990

HOUSE BILL

The House bill eliminates conflicting provisions in OBRA 1990 concerning the reporting date for the report of the National Commission on Children.

SENATE AMENDMENT

Same as House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Corrections related to income security and human resources provisions of OBRA 1990

HOUSE BILL

The House bill corrects references and punctuation in various SSI and AFDC provisions.

SENATE AMENDMENT

The Senate amendment is the same as House bill, except that it omits the AFDC technical corrections.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

3. Correction related to section 8006 of OBRA 1989

HOUSE BILL

The House bill corrects a reference concerning foster care and adoption assistance.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

4. Technical corrections related to human resource and income security provisions of OBRA 1989

HOUSE BILL

The House bill corrects a word and spacing in AFDC quality control and adoption assistance legislative language.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

5. Amendment related to section 13101(d)(2) of OBRA 1990

HOUSE BILL

The House bill corrects and simplifies language concerning special sequestration rules for JOBS funds.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

6. Elimination of obsolete provisions relating to treatment of the EITC

HOUSE BILL

The House bill eliminates provisions in SSI law about treatment of EITC made obsolete by OBRA 1990, which specifies that SSI (and AFDC, Medicaid, and food stamps) are to disregard EITC as income.

SENATE AMENDMENT

Same as House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

7. Redesignation of certain provisions

HOUSE BILL

The House bill redesignates two subparagraphs of the Social Security Act concerning when face-to-face interviews at field offices must be granted.

SENATE AMENDMENT

Same as House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

X. MEDICARE PROVISIONS

A. AMENDMENTS RELATING TO PART A OF THE MEDICARE PROGRAM

1. Hospital wage index provisions

PRESENT LAW

A change in classification of hospitals from one wage area to another may not result in the reduction in the wage index for a county to an amount below the level of the rural wage index for a State. No similar protection applies in the case of an urban area with a wage index already below the rural wage index for a State, or in the case of an urban area located in a State without any rural areas. Certain hospitals in rural counties adjacent to one or more urban areas are treated as part of an urban area if they otherwise meet certain requirements with respect to commuting standards used in designating Metropolitan Statistical Areas or New England County Metropolitan Areas as published in the Federal Register on January 1, 1980.

HOUSE BILL

No provision.

SENATE AMENDMENT

Provides that a change in classification of hospitals from one area to another may not result in a reduction in the wage index for an urban area if the area has a wage index below the rural wage index for the State, or if the urban area is located in a State without any rural areas. Replaces the January 1, 1980 requirements with respect to commuting standards with the most recently available standards, but provides that any hospital that qualified for treatment as an urban county under the 1980 standards but not meeting the most recent standards shall continue to qualify.

Effective date.—Applies to discharges occurring on or after the date that is 30 days after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. The provision relating to holding harmless certain urban areas applies to urban areas with a wage index below that of rural areas in the State or to an urban area that is the only urban area in a State with no rural areas. The Secretary is not authorized to adjust the standardized amounts to reflect the effects of this provision. The agreement follows the Senate amendment with respect to updating commuting standards with an amendment to provide that the standards to be used shall be those used most recently in actual designations of Metropolitan Statistical Areas. Rural hospitals treated as urban as of the date of enactment would continue their current treatment. The agreement provides that the Secretary must consider occupational mix in the development of guidelines for reclassification only to the extent he determines appropriate. The conferees wish to reaffirm that the Secretary has the authority to review and modify as he finds necessary the guidelines to be used by the Medicare Geographic Classification Review Board in rendering decisions pursuant to section 1886(d)(10).

Effective date.—Enactment, except that the provision for updating standards is effective October 1, 1993.

2. Hospital outlier payments

PRESENT LAW

The Secretary is required to make additional payment for outlier cases, those involving long stays or extraordinary costs as compared to other cases in the same DRG. The payments are required to approximate the marginal costs of care beyond the outlier threshold. The Secretary, in a final rule promulgated September 1, 1992, has established a new method for computing payments for day outliers, those with long lengths of stay. The per diem payment would be determined by dividing the standard DRG payment for a given case by the arithmetic mean length of stay for the relevant DRG, and multiplying the result by .55.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that, for discharges occurring on or after January 1, 1993, and before July 1, 1993, the Secretary shall use the day outlier methodology in effect for fiscal year 1992, rather than the new methodology promulgated in the final rule issued September 1, 1992. The new methodology would continue in effect for discharges occurring on or after July 1, 1993 and before October 1, 1994.

3. Essential Access Community Hospital amendments

PRESENT LAW

(a) The Omnibus Budget Reconciliation Act of 1989 established the Essential Access Community Hospital demonstration program. Under this program, up to 7 States may be designated by the Secretary to receive grants to develop rural health networks consisting of essential access community hospitals and rural primary care hospitals. Individual hospitals may be designated as essential access community hospitals and rural primary care hospitals. Authorization of appropriations for fiscal years 1990, 1991 and 1992 is $10 million a year for grants to States and $15 million a year for grants to hospitals. In order to receive designation by a State as a rural primary care hospital, a facility must meet certain criteria, including a requirement that inpatient stays not exceed 72 hours.

(b) The Secretary of Health and Human Services is required to make grants to up to seven States to participate in the Essential Access Community Hospital (EACH) program.

(c) The Secretary may designate an urban hospital as an essential access community hospital if it meets the criteria for designation as a rural referral center.

(d) The Secretary may designate a hospital as an essential access community hospital if it is located in a State receiving an EACH program grant.

(e) Rural primary care hospitals are required to have written policies governing the provision of services, and have a physician, physician assistant, or nurse practitioner responsible for the execution of those policies.

(f) Medicare inpatient hospital benefits are subject to the inpatient hospital deductible and to coinsurance after 60 days of hospitalization during a spell of illness.

HOUSE BILL

No provision.

SENATE AMENDMENT

(a) Continues authorization for appropriations at current levels ($10 million a year for grants to States and $15 million a year for grants to hospitals) for fiscal years 1993, 1994 and 1995. Modifies the length of stay requirement for State designation of rural pri-

mary care hospitals to require these facilities to maintain an average length of stay not to exceed 72 hours.

(b) Increases the number of States eligible for grants under the EACH program from seven to nine.

(c) Authorizes the Secretary to designate an urban hospital as an essential access community hospital if the hospital otherwise meets the criteria for designation.

(d) Authorizes a State receiving a grant under the EACH program to designate as an essential access community hospital or a rural primary care hospital a facility in an adjoining State if the facility is otherwise eligible for designation. Authorizes the Secretary to designate a facility as an essential access community hospital or a rural primary care hospital if the facility is not in a State receiving an EACH program grant if the facility is a member of a rural health network of a State receiving a grant.

(e) Amends the requirements for written policies and procedures and the supervision of those procedures in rural primary care hospitals to clarify that the requirements are similar to those for hospitals. Specifically, requires rural primary care hospitals to appoint a physician, as defined in section 1861(r)(1) of the Social Security Act, to supervise the implementation of the policies.

(f) Clarifies the applicability of the inpatient hospital deductible and coinsurance to stays in rural primary care hospitals. Corrects other minor drafting errors.

Effective date.—Enactment.

CONFERENCE AGREEMENT

(a) The conference agreement follows the Senate amendment, except that the length of stay requirement is modified to provide that no patient may be admitted unless the attending physician certifies that the patient may reasonably be expected to be discharged or transferred within 72 hours, and that the facility may not provide surgery or other services requiring general anesthesia (other than procedures approved for performance on an ambulatory basis) unless the attending physician certifies that the risk of transfer to another facility for the services outweighs the benefits. The Secretary is authorized to terminate the designation of a rural primary care hospital whose average length of stay (not counting longer stays during periods of inclement weather or other emergencies) exceeds 72 hours. The agreement requires the General Accounting Office to report to the Congress, within 2 years after enactment, on the application and impact of the changes in length-of-stay requirements.

(b) The conference agreement follows the Senate amendment. The conferees anticipate that the Secretary will designate additional States on the basis of applications received in response to the initial solicitation and the evaluation performed by the Department in response to those applications.

(c) The conference agreement follows the Senate amendment, except that an urban hospital designated as an essential access community hospital is not to receive any change in Medicare payment methodology.

(d) The conference agreement follows the Senate amendment, except also authorizes the Secretary to make direct grants to facilities so designated.

(e) The conference agreement follows the Senate amendment.

(f) The conference agreement follows the Senate amendment. The agreement also authorizes a rural primary care hospital that had a swing-bed agreement at the time of designation to provide swing-bed services up to the hospital's licensed acute care bed capacity at the time of conversion, minus the number of inpatient beds retained by the rural primary care hospital. If the facility has a licensed distinct-part nursing facility at the time of conversion, it may continue to operate that facility at its licensed capacity. The agreement provides that payment for outpatient rural primary care hospital services shall be made without regard to lesser-of-cost-or-charges limits.

Effective date.—Enactment.

4. Rural health transition grant program extension

PRESENT LAW

The Omnibus Budget Reconciliation Act of 1987 instituted a program of grants to assist rural hospitals with fewer than 100 beds in developing and implementing projects to modify the type and extent of services they provide. Grants may be used to develop health systems with other providers, diversify services, recruit physicians, improve management systems, and instruction and consultation via telecommunications to physicians in manpower shortage areas. The program is authorized at $25 million per year for fiscal years 1990, 1991 and 1992. The fiscal year 1992 appropriation is $23 million.

HOUSE BILL

No provision.

SENATE AMENDMENT

Authorizes appropriations at $30 million a year for fiscal years 1993 through 1997.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that appropriations are authorized only through fiscal year 1997.

Effective date.—Enactment.

5. Regional referral center extension

PRESENT LAW

Hospitals in rural areas meeting certain criteria may be classified as regional referral centers and receive payment based on the prospective payment system standardized amount for hospitals in "other urban" areas (those with less than 1 million people) rather

than the standardized amount for rural areas. The Omnibus Budget Reconciliation Act of 1989 provided that hospitals classified as regional referral centers on September 30, 1989 would retain such status through cost reporting periods beginning before October 1, 1992. Beginning on October 1, 1994 payments to hospitals in rural areas will be based on the same standardized amount as payment to hospitals in "other urban" areas.

HOUSE BILL

No Provision.

SENATE AMENDMENT

Provides that all hospitals classified as regional referral centers on September 30, 1992 will retain such status through September 30, 1994. Gives hospitals to which this provision applies that lost regional referral center status as a result of a favorable reclassification decision by the Medicare Geographic Classification Review Board for fiscal year 1993 the opportunity to decline the reclassification and retain referral center status. Requires that the Secretary not revise standardized amounts to account for hospitals that decline reclassification.

Effective date.—The extension of regional referral center status is effective as if included in the enactment of OBRA 1989.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The conferees do not intend that the Secretary shall be required to reprocess claims submitted on or after October 1, 1992, and before the date a facility declines reclassification.

Effective date.—Enactment.

6. Small, Medicare dependent, rural hospital extension

PRESENT LAW

The Omnibus Budget Reconciliation Act of 1989 provides for special payment for rural hospitals qualifying as Medicare dependent hospitals (MDHs). In order to qualify for MDH status, a hospital must be located in a rural area, have no more than 100 beds, and have had at least 60 percent of its inpatient days or discharges attributed to Medicare patients during the cost reporting period beginning during fiscal year 1987. MDHs are eligible for payment under the same rules as sole community hospitals for cost reporting periods beginning on or after April 1, 1990, and ending before April 1, 1993. Beginning on October 1, 1994, payments to all hospitals in rural areas will be based on the same standardized amount as payment to hospitals in "other urban" areas (those with less than 1 million people).

HOUSE BILL

No provision.

SENATE AMENDMENT

Continues special payments for small rural, Medicare dependent hospitals for discharges occurring through September 30, 1994 on a phase-down basis. For discharges occurring during cost reporting periods beginning on or after April 1, 1990 and before April 1, 1993, provides that currrent MDH payments apply. For discharges occurring during any cost reporting period beginning on or after April 1, 1993 through September 30, 1994, provides that an MDH will receive 50 percent of the difference between their payment under the current MDH rules and the payment regularly provided under the prospective payment system. Allows small rural Medicare dependent hospitals that lost MDH status as a result of a favorable reclassification decision by the Medicare Geographic Classification Review Board for fiscal year 1993 the opportunity to decline the reclassification and retain Medicare dependent hospital status. Requires that the Secretary not revise standardized amounts to account for hospitals that decline reclassification.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The conferees do not intend that the Secretary shall be required to reprocess claims submitted on or after October 1, 1992, and before the date a facility declines reclassification.

Effective date.—Enactment.

7. Rural demonstration extension

PRESENT LAW

The Omnibus Budget Reconciliation Act of 1990 gave the Secretary authority to waive such provisions of Title XVIII as necessary in order to conduct any demonstration project with respect to limited-service rural hospitals with respect to which the Secretary has entered into an agreement prior to enactment of the Omnibus Budget Reconciliation Act of 1989.

HOUSE BILL

No provision.

SENATE AMENDMENT

Continues any such demonstration projects at least through December 31, 1995.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date.—Enactment.

8. Hemophilia pass-through extension

PRESENT LAW

The costs of administering blood clotting factor to Medicare beneficiaries with hemophilia who are admitted for hospital stays are not reimbursed as part of the DRG payment, but are separately reimbursed. The additional payments apply only to clotting factor furnished between June 19, 1990 and December 19, 1991.

HOUSE BILL

No provision.

SENATE AMENDMENT

Extends additional payment for hemophilia clotting factor for clotting factor furnished through September 30, 1994.

Effective date.—Effective as if included in the enactment of OBRA 1989

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. Further, with respect to patients with intractable epilepsy, the conferees expect the Secretary to develop and apply, at the earliest possible time, procedure codes necessary to more accurately measure the relative resource requirements for such patients receiving intensive neurodiagnostic monitoring.

Effective date.—Effective as if included in the enactment of OBRA 1989.

9. State hospital payment programs

PRESENT LAW

Under Section 1886(c) and section 1814(b) of the Social Security Act, the Secretary may provide that Medicare payments to hospitals in a State be made in accordance with a state hospital reimbursement system meeting certain standards. The State must assure that over a 36-month period, payments to hospitals for services provided to Medicare beneficiaries will not exceed the amount that would have been paid for those services under Medicare payment rules. The Secretary may recoup excess payments to hospitals if he finds that this standard was not met.

HOUSE BILL

No provision.

SENATE AMENDMENT

Delays recoupment of any amount owed by hospitals due to alleged overpayments relating to the operation of a Section 1886(c) Medicare waiver until April 1, 1993. Does not change current law with respect to payment of interest on overpayments.

Requires the Secretary, prior to the beginning of recoupment, to provide to the State and the hospitals in the State all relevant

data used by the Secretary to determine the amount of alleged overpayments, including but not limited to (1) the cost reports submitted by hospitals for the relevant cost reporting periods and (2) the methodology used by the Secretary to determine the payments which would otherwise have been made to the hospitals by Medicare during the period for which any overpayments are alleged to have been made.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. The agreement further provides that, in the case of a State with a Medicare-approved payment system under section 1814(b), nothing in Medicare or Medicaid law, the Employee Retirement Income Security Act (ERISA), or sections 81 and 89 of Title 5, United States Code, shall be construed as providing for payment of services at rates other than those provided for under the State's system. The state program would continue to be required to meet the standards for Medicare-approved payment systems under section 1814.

Effective date.—Enactment.

10. Psychology services in hospitals

PRESENT LAW

Clinical psychologists are authorized to provide qualified psychologist services to Medicare beneficiaries. In order to participate in Medicare, hospitals must require that all Medicare patients are under the care of a physician, defined to include doctors of medicine, osteopathy, dentists, podiatrists, chiropractors and optometrists practicing within the scope of State law. Certain States authorize psychologists to supervise the care of inpatients receiving psychologist services.

HOUSE BILL

No provision.

SENATE AMENDMENT

Provides that, in a State in which such supervision is authorized by state law, the care of hospital inpatients receiving qualified psychologist services may be supervised by a clinical psychologist with respect to such services to the extent permitted by state law.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The agreement follows the Senate amendment.

Effective date.—Enactment.

11. Graduate medical education payments in hospital-owned community health centers

PRESENT LAW

Additional payments to hospitals for the indirect costs of medical education are based on the ratio of interns and residents at the hospital to the number of beds in the hospital. Interns and residents training in a hospital outpatient department are included for purposes of determining the ratio.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement provides that services of an intern or resident in a community health center (as defined in the Public Health Service Act) that is wholly owned or controlled by a hospital shall be counted for purposes of determining the hospitals intern and resident to bed ratio, if the hospital incurs all or substantially all the cost of such services.

12. Treatment of certain military facilities

PRESENT LAW

Other than Indian Health Service hospitals, hospitals owned by, or under contract to, the Federal Government are not eligible for reimbursement under Medicare. Uniformed services treatment facilities are private hospitals under contract to the Federal Government. The Assistant Secretary of Defense for Health Affairs has been directed to prepare a report on joint military/civilian health centers.

HOUSE BILL

No provision.

SENATE AMENDMENT

Prohibits the Secretary of Health and Human Services from taking action to recover certain amounts paid by Medicare to uniformed services treatment facilities in Boston, Baltimore, and Seattle for services that were provided between October 1, 1986 and December 31, 1989, to members of the uniformed services or their dependents who were also eligible for Medicare. Requires the Secretary of Health and Human Services, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, to conduct a study of the feasibility and desirability of establishing a joint medical facility among the Department of Defense, Department of Veterans Affairs, and other public and private entities. Provides that the study shall include the need to make changes in the Medicare

and Medicaid programs in order to facilitate the establishment of such joint medical facilities.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that it permits the Secretary to recoup from the facilities to the extent that any funds are provided for that purpose under the fiscal year 1993 Department of Defense Appropriations Act. The agreement requires the Secretary to report on the required study of joint medical facilities to the Congress by June 1, 1993.

Effective date.—Enactment.

13. Skilled nursing facility wage index

PRESENT LAW

Skilled nursing facilities are reimbursed on a reasonable cost basis, subject to per-diem limits. The limits are adjusted to reflect differences in area wages. In applying the wage index adjustment, the Secretary currently uses a wage index based on wage data collected from hospitals. In its March 1, 1992 Report and Recommendations, the Prospective Payment Assessment Commission recommended that the Secretary collect data on employee compensation and paid hours of employment for nursing facilities for the purpose of implementing a nursing facility wage index to adjust Medicare SNF payments.

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires the Secretary to begin collecting the data necessary to compute a wage index based on wages specific to skilled nursing facilities within one year of enactment. The Prospective Payment Assessment Commission would be required to study and report by March 1, 1993 on the impact of applying routine per-diem cost limits on a regional basis.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. In addition, the conference agreement includes a correction for a clerical error in the nursing home reform provisions pertaining to the period of resident assessment.

Effective date.—Enactment.

14. Clarification of DRG payment window expansion

PRESENT LAW

Services provided by a hospital (or an entity wholly owned or operated by the hospital) to an inpatient of a hospital during the three days prior to admission are not separately reimbursed under

part B of Medicare if they are diagnostic services or otherwise related to the admission.

HOUSE BILL

No provision.

SENATE AMENDMENT

Provides that this provision does not apply to hospitals that are not paid on the basis of diagnosis related groups (DRGs).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.
Effective date.—Enactment.

B. AMENDMENTS RELATING TO PART B OF THE MEDICARE PROGRAM

1. Reinstating separate payment for interpretation of electrocardiograms (EKGs)

PRESENT LAW

OBRA 90 eliminated separate payments for interpretation of EKGs performed or ordered to be performed as part of, or in conjunction with, a medical visit or consultation, effective January 1, 1992.

HOUSE BILL

No provision.

SENATE AMENDMENT

Repeals the OBRA 90 prohibition on separate payments for interpretation of EKGs. Separate fee schedule payment amounts for interpreting EKG in all settings would be established. Provides for several adjustments to the fee schedule in order to comply with budget neutrality rules. First, HCFA would subtract the relative value units for EKG interpretation that were bundled into medical visit and consultation relative values for 1992.

Requires HCFA to make across-the-board adjustments to the relative values for all services to account for the shortfall of relative value units that were bundled into medical visits and consults in 1992. HCFA currently estimates this reduction at .37 percent; the reduction would apply only to service paid at the full fee schedule.

Requires HCFA to make an adjustment to the historical payment basis in the fee schedule to account for the fact that more EKG interpretations would be paid at the full fee schedule amount than medical visits and consultations during the transition. No reduction would be made for services already at the full fee schedule amount. For services in transition to the fee schedule, the estimated reduction is 1.07 percent in 1993, 0.84 percent in 1994, and 0.6 percent in 1995.

Effective date.—Applies to services furnished on or after January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment with a technical amendment clarifying the budget neutrality adjustment. Under the agreement, the Secretary is required to reduce the relative value for all services (except anesthesia services) by the percentage the Secretary determines necessary so that beginning in 1996 expenditures under the fee schedule would not exceed those which would have been made in the absence of this provision. For anesthesia services, the appropriate adjustment is made to the conversion factor. The agreement also requires the Secretary to make appropriate budget neutrality adjustments in the historical payment portion of the 1993 transition payment which applies in 1993, 1994, and 1995.

The conferees are concerned that the repeal of the prohibition on separate payments for EKGs on a deficit neutral basis, combined with the repeal of the new physician payment policy, would significantly reduce payments for primary care physicians. However, four major organizations representing primary care physicians have indicated their continuing support for these provisions as reflected in the following letters.

AMERICAN MEDICAL ASSOCIATION,
July 23, 1992.

Hon. FORTNEY (PETE) STARK,
House of Representatives, 239 Cannon House Office Building, Washington DC.

DEAR REPRESENTATIVE STARK: I would like to reaffirm the resolve of the American Medical Association to work with you and other Congressional leaders to enact legislation this year to restore equity and fairness for EKG and "new" physician services. Eliminating payments for EKG interpretations and reducing payments to physician for the initial four years of Medicare billings are contrary to the basic concept of a resource based relative value system. EKGs are a proven value to patients. Further, the resource inputs of the service rather than the length of billing history of the physician should be the determinant of Medicare payments.

We believe that physicians should not be penalized to correct inappropriate policies. Physicians are understandably concerned that adjustment to fulfill budget requirements and make "technical corrections" could lead to a significant erosion of the original objectives of Medicare payment reform. However we recognize the limits mandated by the Budget Enforcement Act. The AMA will continue to explore alternative means of financing. Until such time as other acceptable budget neutral financing mechanisms are identified, the AMA continues to support the EKG and new physician provisions adopted by the Ways and Means Health Subcommittee on July 1.

Based on our review of publicly available data, we believe that some of the estimates outlined in your letter overstate the impact of the proposed EKG and new physician provisions. In assessing the impact of proposed EKG changes, it is important to recognize the following points:

The .37 conversion factor reduction is a technical correction to compensate for a HCFA calculation error. HCFA in-

tended to make this adjustment regardless of any legislation to restore payment for EKG interpretations.

The affected medical specialties have long recognized that visit code reductions would be necessary as part of the "EKG fix" given that relative value units were added to the visit codes to compensate for the EKG cut.

The projection of a 1.07% reduction for services still in transition appears to be almost twice as high as AMA estimates. It would be useful to have additional details on how this figure was derived.

Regarding the proposed new physician changes, it should be noted that:

Reduced payments to new physician cannot be justified as a form of apprenticeship. Physicians already complete an "apprenticeship" better known as residency or internship training before they bill Medicare.

It should be noted that rural localities that are exempt from the new physician reductions are limited to HHS designated manpower shortage areas. Many localities that are commonly accepted as rural areas have not been so designated by HHS.

The financial impact on selected groups of physicians is one of many considerations in weighing Medicare program changes. An overriding concern for Congress, the Administration, physician organizations and Medicare patients is whether certain policies undermine the integrity of the policy consistency of the new Medicare payment system while it is still in its infancy. The RBRVS was adopted to provide a more rational framework for Medicare payment policies. The EKG and new physician policies represent a continuation of the arbitrary and capricious nature of the usual, customary and reasonable (UCR) payment system that has been replaced by the RBRVS.

Your continued efforts to achieve an equitable solution to the EKG and new physician problems are appreciated. Clearly, we believe that the original decisions to end payments for EKGs and to phase in full payments for new physicians were misdirected and needed to be revised. While we object to the continued erosion of the conversion factor, we nevertheless support the Ways and Means Health Subcommittee's approach to fixing these problems. Please let us know if you have further questions regarding these two Medicare policies or any other issues to be considered during the upcoming mark up by the full Ways and Means Committee.

Sincerely,

JAMES S. TODD, MD.

AMERICAN ACADEMY OF
FAMILY PHYSICIANS,
July 22, 1992.

Hon. FORTNEY PETE STARK,
Chairman Subcommittee on Health, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR CONGRESSMAN STARK: Thank you for your letter of July 13, 1992, regarding the policies recently adopted by the Health Subcommittee to restore payment for the interpretation of electrocardiograms and eliminate fee reductions for new physicians. We appreciate the caution expressed in your letter regarding the deficit neutrality provisions in these policies. Allow me this opportunity to describe the Academy's perspective on these important issues and to express our continued support for the Health Subcommittee's actions.

Three adjustments are proposed to keep the restoration of electrocardiogram interpretation deficit-neutral: (1) a conversion factor reduction for the misestimation of the relative value units that were added to visit services to reflect the work of electrocardiogram interpretation, (2) the removal of the added relative units from visit codes, and (3) the reduction in the 1992 payment base to correct for asymmetry. The proposal to eliminate the fee reductions imposed on new physicians will require a reduction in the conversion factor estimated between 1.2 and 1.6 percent. The exact impact of these adjustments will vary among physicians in different specialties and in different locations. We have simulated the impact of each of these specific adjustments on family physicians. Our results are qualitatively similar to those suggested in your letter, although quantitatively less severe. Naturally, there will be an offsetting positive impact on family physicians from the restoration of payment for electrocardiogram interpretation.

As I previously communicated to you, the Academy's support for these measures is primarily based on our desire to preserve the integrity of the fee schedule. We strongly believe that the elimination of coverage of electrocardiogram interpretation and the reduction in new physician fees undermined the resource cost basis for setting physician fees. We believe this is true both in terms of individual clinical decisions and in regard to the long-run decisions regarding physicians' specialty and practice location choices. The long-term effect of eliminating coverage of electrocardiograms interpretation and reducing new physicians fees is to distort the entire fee schedule and compromise beneficiary access to appropriate and necessary services.

While the Subcommittee's actions were taken in the context of the Medicare physician fee schedule and the deficit-neutrality requirement of the current federal budget process, we have never considered the elimination of payment for the interpretation of electrocardiograms and the fee reductions imposed on new physicians to be part of the Medicare physician fee schedule. Indeed, these provisions were adopted a year after the fee schedule was established are entirely inconsistent with the goals of a resource-based fee schedule. Ergo, we do not regard the Subcommittee's actions as a refinement of the fee schedule, but, rather, a reversal of

ill-considered measures that were from the beginning inconsistent with the concept of a resource-based fee schedule.

This letter also provides an appropriate opportunity to express our additional concerns regarding the Medicare physician fee schedule. It is becoming increasingly apparent that, as implemented, the resource-based fee schedule will not promote generalism to the extent that we had anticipated or to the extent so desperately needed in this country. No matter how one views health care reform, correcting the over-specialization of the American health care system is a necessary prerequisite. Our concerns about the maldistribution of physician specialists will be reflected in our advocacy of further reform of Medicare physician payment as well as reform of the health care system in general.

Thank you for this opportunity to express our continued support for the Health Subcommittee's policies to restore payment for electrocardiogram interpretation and eliminate the new-physician fee reductions. Please do not hesitate to contact me if you desire further information on these important matters.

Sincerely,

WILLIAM H. COLEMAN, M.D., PH.D.,
Chair, AAFP Board of Directors.

AMERICAN COLLEGE OF PHYSICIANS,
July 24, 1992.

Hon. PETE STARK,
Chairman, Ways and Means Subcommittee on Health, House of Representatives, Washington, DC.

DEAR MR. STARK. Thank you for the opportunity to comment on proposed changes in the physician fee schedule to accommodate restoration of payments for EKG interpretation and new physicians.

In considering issues of physician payment, primary care must be the first priority for Congress. Careful evaluation and management of the patient by a generalist physician is the core of medical care. The nation's ability to expand access to care will depend in part on our ability to supply primary care physicians to care for undeserved people. Not the least element of this is that primary care is cost-effective care, in terms of both the utilization of services and the prevention of illness. Accordingly, the proposed changes must be viewed in the context of trends affecting primary care.

Promoting primary care was one of the goals of physicians payment reform legislation passed in 1989. As we look at the issues facing us now, however, we find that formulas and technicalities are subverting that goal. The numbers are driving policy in ways that harm primary care. Consider these examples:

The Medicare Volume Performance Standard lumped evaluation and management (E/M) services, whose volume has not increased, with medical procedures, many of which are increasing at rates above 20% annually. The Secretary has now recommended an update of only .3% because the MVPS was ex-

ceeded—penalizing primary care physicians for sins they did not commit. (We have written you previously about this issue.)

Some procedures may have been undervalued in the 1992 fee schedule. If they are fixed, as you point out, another one percent will come out of E/M services.

HCFA underestimated the total relative value units when it incorporated work for EKGs into visit payments. We are now told that payments must be cut by a greater amount to make up for HCFA's mistake.

The formula specified in the 1989 legislation for calculating practice costs ties that calculation to historical charges, an anomaly in a resource-based system. The result is that about 50% of the fee calculation is skewed to increase hospital-based services, while practice costs for office-based evaluation and management services often are reimbursed well below actual costs.

Taken together, these reductions have a severe negative impact on primary care. If a central goal of Congress is to promote primary care, then Congress must realign the formulas and correct the technicalities to achieve that goal. We are ready to work with you to correct these problems in Medicare legislation this year.

The budget cut in payments for EKGs was particularly offensive because it conveyed the message that the physician's interpretation of an essential diagnostic tool was of no value. The budget cut in payments for new physicians was inconsistent with a payment system based on resources used in delivering services. In light of the hostility generated last year by HCFA's proposed "behavioral offset," and widespread disappointment with the fee schedule, our members have demanded that the EKG and new physician provisions be overturned. The College, therefore, supports the actions of the Subcommittee to restore their payments. The amendment must be written in a way that precludes any application of a behavioral offset related to restoration.

Mr. Chairman, primary care is in trouble. It cannot afford another backward step. We cannot emphasize too strongly the precarious position in which primary care physicians find themselves frequently unable to cover overhead costs with the Medicare payments they now receive. We hear a disturbing number of reports that physicians are already trying to limit the number of Medicare patients they treat. We look forward to working with you, starting immediately, to take actions that will correct the formulas and the technical restraints, and adopt a consistent policy that will recognize and promote the essential services of primary care physicians.

Thank you for the opportunity to express our support for the Subcommittee's actions. We hope that it will be the first step in a broad initiative to address the critical issues facing primary care.

Sincerely,

ROLF M. GUNNAR, M.D., FACP,
Chairman, Board of Regents.

AMERICAN SOCIETY
OF INTERNAL MEDICINE,
July 20, 1992.

Hon. PETE STARK,
Chairman, Subcommittee on Health, Committee on Ways and Means, Washington, DC.

DEAR MR. STARK: This is response to your letter requesting clarification of the views of the American Society of Internal Medicine on pending legislation to restore payments for interpretation of EKGs and to repeal the payment limits on new physicians. I apologize in advance for the length of this response, but several issues raised in your letter require clarification.

ASIM strongly believes that Congress and HCFA must take steps to assure that the Medicare fee schedule meets the intent of improving payments for primary care and other undervalued evaluation and management services. We do, however, also fully support the EKG and new physician provisions that were approved by the subcommittee and repeal of the payment limits on new physicians. We specifically support the subcommittee's approach of maintaining budget neutrality and restoring payment for EKG interpretation by reducing the relative values that HCFA specifically added-on to visits and consultations for the purpose of including EKG interpretation in the payments for those services, and reducing payments for services in transition. We also support the subcommittee's action to repeal the payment limits on new physicians.

The reason for our support of both of these policies is not primarily financial. Although some of our members will gain a modest amount financially from these changes, others will not. What is more important to us is the principle behind each: that under a resource based system all covered services that require physician work should be compensated at the resource based level, and that all physicians should be paid the same for services that require equivalent work, regardless of how long they've been in practice.

In an ideal situation, we would have preferred that these changes not result in any reductions in payments for E/M services. However, budget neutrality requirements necessitated that we identify an approach that allows full restoration of payments for EKG interpretation. The approach to the EKG issue that was approved by the subcommittee is that only one that would assure that EKG payments are based on the actual resource costs of providing the service. Other options would have either set payments at less than resource costs—thus violating the basic principle of the RBRVS—or would have required much deeper, permanent, and disproportionate cuts in primary care and other E/M services. We also support as a matter of principle repeal of the new physician payment limits, even though this too will require reductions in what otherwise would have been paid for E/M and other services.

If it was possible, ASIM certainly would have preferred identifying alternative sources of funding for each of these changes that would have eliminated, or reduced, the adverse impact on other physician serviced, particularly E/M services. And if such alternative funding sources are identified, the ASIM of course would be

supportive. But realistically, we recognized that the proposals would not be enacted unless we were willing to recommend funding options that would maintain budget neutrality. From a membership standpoint, the easy way out of this dilemma would have been for ASIM to tell our members that we support cuts in nonphysician services in order to pay for the new physician and EKG proposals, or that we just support the proposed policies but have decided not to offer any way to pay for them. But we also knew that this would not be viewed as a credible response by Congress, and calling for cuts in nonphysician services would have had the effect of attracting opposition from their lobbying organizations—with the likely effect that the EKG and new physician legislation would have died in Congress. If we were really serious about getting these proposals enacted—and we are—we recognize that we had to identify credible and fair ways of funding them out of payments for physician services. That is why we supported, and continue to support, the subcommittee's actions.

We think, however, that it is essential that the EKG and new physician legislation be drafted in a way that would preclude application of a volume baseline adjustment or behavioral offset in scoring the new physician amendment. ASIM has been told by HCFA policy staff that it does not intend to apply a volume baseline adjustment to the EKG legislation, but it is essential that the law be written so that there is no possibility of such an adjustment being applied. We were advised during last week's briefing by Ways and Means subcommittee staff that the 1.2 percent reduction in payments for all physician services that would be required under the new physician legislation does not include a volume baseline adjustment. We understand, however, that it is critical that the law be drafted so as to preclude such an adjustment being applied by HCFA or the Congressional Budget Office. ASIM urges the committee to draft the legislation in such a way as to absolutely preclude the application of a behavioral offset to either the EKG or new physician proposals. ASIM commends you and the other members of the subcommittee for taking the lead last year to oppose behavioral offset adjustments in the fee schedule, by introducing and cosponsoring H.R. 3070. We appreciate your willingness to take a similar position on the new physician and EKG proposals, so that the offsetting reductions in other services, particularly primary care serviced, are minimized.

We recognize that as a consequence of the proposed legislation on EKSs and new physicians, payments for primary care and other services will be lower than they otherwise would have been. For the record, however, your July 13 letter overstates the adverse impact on primary care services. Based on the estimates provided by HCFA, and the transition formula mandated by OBRA 89, the reduction in payments for E/M serviced in transition that would be caused by the EKG legislation would be 2.0% in 1993, 2.2% in 1994, 2.4% in 1995, and 2.7% in 1996. The impact of the EKG legislation on E/M services paid at the full fee schedule amount would be 2.7% in 1993 and thereafter. Since it is our understanding that the new physician payments would be funded by an across the board averaged reduction of 1.2% in all services, the combined effect of the EKG and new physician proposals on payments for the 66% of

all E/M services in transition would be 3.2. percent in 1993, 3.4 percent in 1994, 3.6% in 1995, and 3.9% in 1996. The combined effect of both legislative proposals in E/M services paid at the full fee schedule is 3.9 percent in 1993 and thereafter. An explanation of our calculations are attached. Since the calculations are based on estimates from and conversations with HCFA staff, we are confident that they more accurately represent the impact of the proposals than the "reductions of over four percent in payments for office visits and primary care services on January 1, 1993" alluded to in your letter. ASIM requests that the full committee be provided with these revised, corrected estimates. We will be glad to discuss our estimates with subcommittee, HCFA, and CBO staff if necessary.

Obviously, if the new physician and EKG provisions are scored to include a behavioral offset, the reductions in E/M services would be significantly (and unacceptably) increased.

In gauging the impact on primary care of the specific legislation to restore payments for EKG interpretation, and the overall policy of repealing the payment limits on new physicians, several other things should be kept in mind. First, the .37 percent reduction in relative values is due to correction of HCFA's error in calculating the add-ons; it is our understanding that this correction would be required even if there was no legislation enacted to restore payments for EKG interpretation. Second, most visits in transition would still be expected to experience modest gains in payment in 1993 and thereafter, since the reductions are taken from increasing RBRVS payment levels, instead of the absolute reductions implied by the letter. Third, the relative value units (RVUs) for visits that are to be stripped out under the subcommittee's amendment were added on the HCFA solely to pay for EKG interpretations provided in conjunction with the visit. There was no expectation that physicians would be able to keep the add-ons once separate payments were restored. Since the RVUs were added to all physician visits, regardless of whether or not the physician actually performs EKG interpretation, it is more fair to the many primary care physicians and others who perform EKG interpretation to have the add-ons stripped off, and separate EKG interpretation payments restored, than maintaining the add-ons. Fourth, the many primary care physicians who perform EKG interpretation in their offices will have a direct (although modest in most cases) financial benefit from full restoration of EKG payments. The benefits of paying EKG interpretation will, for many primary care physicians, offset all or part of the reductions in payments for E/M services. Finally, although primary care services—defined by law as office, nursing, and home visits—are currently exempt from the new physician payment limitations, all other services by primary care physicians are subject to those limits. Therefore, primary care services will gain under repeal of the new physician limits, although to a lesser degree than other specialties.

It should be noted that ASIM supports the new physician amendment as a matter of principle even though physicians in other nonprimary care specialties will benefit financially to a greater degree. Therefore, we expect that the committee will reject the complaints of surgical groups that are unwilling to contribute

anything to the EKG correction on the basis that they will not gain as much financially from the measure. Fairness suggests that if the primary care specialties support an amendment that disproportionately benefits other physicians, at the cost of lower payments for their E/M services, the surgeons similarly should contribute to the EKG correction.

We support the EKG and new physician provisions, despite the adverse impact and other primary care services, because we believe that the principles that were at stake were so important that legislative correction is essential. And frankly, under current budget restraints, we were left with no other viable option than to reluctantly accept reductions in other services to pay for the required legislation.

But we must emphasize that notwithstanding our support for the EKG and new physicians amendments, we are extremely concerned about the overall erosion of the payment gains for primary care and other E/M services that are occurring as the fee schedule is implemented. HCFA's volume baseline and asymmetry adjustments from the outset significantly lowered the gains for primary care. Since the EKG and new physician legislation will further reduce those gains, it is absolutely essential that Congress take action to block policies that will further reduce payments for those services. We have previously urged the committee to block the higher 1993 update for surgery, require a single update in 1993, and to permanently change the law to prevent a higher surgical update from occurring in the future. ASIM urges you to reconsider your support for the higher surgical update, and to instead work for legislation that would require a single update in 1993 and thereafter. We are also quite concerned about the projection that HCFA's rescaling of all relative values will reduce payments for office visits by as much as one percent. Our observations of the rescaling process have led us to conclude that many procedures may be granted higher relative values than are justified by the actual resource costs of providing those services. ASIM has strongly advised HCFA that such an outcome would be unacceptable, and we urge the committee to exercise oversight to assure that primary care services are not compromised during the rescaling process.

We will also be asking Congress to commit to a legislative agenda to create incentives for physicians to practice in general internal medicine and other primary care specialties. Otherwise, we believe that there will be too few primary care physicians to serve the needs of Medicare patients, particularly with the greying of the population. This will require a significantly greater investment of public funds in primary care. It has become apparent that the primary care and other E/M services will not gain enough under the new fee schedule to create sufficient incentives for primary care. That is why we will be urging Congress not only to oppose policies, such as the higher surgery update, that would further reduce the already-modest gains for primary care that will occur under the fee schedule, but to adopt an activist agenda to increase funding for primary care. In the near future, ASIM will be providing you with our specific recommendations on a legislative package to revitalize general internal medicine and other primary care specialties.

In conclusion, ASIM urges the Ways and Means Committee to:

1. Enact the EKG and new physician provisions approved by the subcommittee, but assure that the offsetting reductions in payments to other services that would result are not greater than required because of inappropriate application of a behavioral offset. We recognize that under current budget rules, enactment of these provisions will still result in offsetting reductions in payments in other services, including some primary care and other E/M services.

2. Block the higher 1993 update for surgery and require a single update in all future years.

3. Exercise oversight to assure that primary care and other E/M services are not lowered as a result of gaming of the RVU refinement process.

4. Work with us on developing an activist legislative agenda to significantly increase the public investment in primary care, including legislation to increase Medicare payments for primary care by an amount that is significantly greater than the modest improvements now expected from the fee schedule.

Sincerely,

ALAN R. NELSON, MD,
Executive Vice President.

2. Payments for new physicians and practitioners

PRESENT LAW

New physicians and practitioners receive reduced payments during their first four years of practice. These reductions were imposed on the first two years of practice by OBRA 87 and extended to the third and fourth years of practice in OBRA 90. Payments are 80 percent of the amount otherwise recognized during the first year of practice, 85 percent during the second year, 90 percent during the third year, and 95 percent during the fourth year. These reductions apply to payments under the fee schedule, prevailing charges, or other fee schedule payment amounts.

HOUSE BILL

No provision.

SENATE AMENDMENT

Repeals reductions in payments to new physicians and practitioners and requires that payments under Section 1848 be no greater or less than they would be in the absence of the repeal.

Effective date.—Applies with respect to physicians' services furnished on or after January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment with a technical clarification of the budget neutrality adjustment. The Secretary is required to reduce the following values and amounts for 1993 (to be applied for that year and subsequent years) by so that Part B expenditures would not exceed the amount of expenditures that would have been made in the absence of this provi-

sion. The specified values and amounts are: (i) the relative values for services (except for anesthesia services, where the reduction is to the conversion factor); (ii) the historical payment portion of the 1993 transition payment; and (iii) the prevailing charge or fee schedule amounts to be applied for services of a health care practitioner (as that term was defined before enactment of this Act).

3. Retaining payment for actual anesthesia time

Present Law

Anesthesia services are paid on the basis of a fee schedule. One component of the fee schedule is actual time spent administering anesthesia. In the proposed rule implementing the RBRVS physician fee schedule, HCFA announced its intention to eliminate the use of actual time and substitute average time. In the final rule, HCFA stated that it would continue to use actual time temporarily while it analyzed other methods of accounting for time in the payment of anesthesia services.

House Bill

No provision.

Senate Amendment

Prohibits HCFA from changing the methodology of calculating anesthesia time in the fee schedules for anesthesia services until January 1, 1997. The Comptroller General of the General Accounting Office is required to: (1) study the actual time reported for anesthesia services under Medicare; (2) compare the actual time reported for a procedure during 1991 with the time reported for the same procedure during each of the 4 succeeding years; (3) evaluate the extent to which the actual time reported for a procedure has increased or decreased during this period; and (4) determine (to the extent practicable): (a) whether increases or decreases are the result of changes in medical practice, physician responses to reductions in payments for anesthesia services, or other factors; and (b) the effect of such increases or decreases on Medicare expenditures for anesthesia services. An interim report to Congress is due by July 1, 1994 and a final report is due by July 1, 1996. The Comptroller General is required to consult with the Physician Payment Review Commission (PPRC) in designing the study. PPRC is required to comment on the interim and final reports.

Effective date.—Enactment.

Conference Agreement

The Conference agreement includes the Senate amendment with a modification. The agreement makes the payment provision permanent and does not include the requirement for a GAO study.

4. Geographic cost of practice index refinements

PRESENT LAW

One of the components of the Medicare fee schedule for physicians' services is a geographic cost of practice index (GPCI), which is designed to measure local variations in the costs of practicing medicine. HCFA has previously indicated that they intend to revise the GPCI by 1995. Some have raised concerns that the index uses outdated Bureau of Census data and may not accurately reflect true variations in practice expenses.

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires HCFA to review and revise the geographic practice cost index by January 1, 1994 using the most recent data on practice expenses, malpractice expenses and physicians' work effort. The Secretary of HHS would be authorized to take unique local circumstances into account in revising the index. The Secretary is required to study and report to Congress on the construction of the index by April 1, 1993.

Requires the Secretary to study and report on: (1) the data necessary to review and revise the GPCI indices, including the shares allocated to physicians' work effort, practice expenses (other than malpractice expenses) and malpractice expenses; the weights assigned to the input components of such shares; and the index values assigned to such components; (2) any limitations on the availability of data necessary to review and revise the indices at least every 3 years; (3) ways of addressing such limitations, with attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every three years; and (4) the costs of developing more accurate and timely data sources.

Requires the Physician Payment Review Commission to study and report to Congress by July 1, 1993 on the feasibility and desirability of providing for a special adjustment to the index value of the medical equipment and supplies input component of the index with respect to services: (1) furnished by a physician who practices in an isolated area; (2) requiring the present of expensive medical equipment and supplies in the physician's office; and (3) equipment whose operating costs per service are increased by low-volume use.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment with an amendment. The Secretary is required to consult with representatives of physicians in reviewing geographic adjustment factors and indices. The deadline for the initial review and revision of the geographic adjustment factor is January 1, 1995. The requirement for consideration of unique local factors is not included. The Secretary is required to submit the report on the construction of

the index by one year after enactment. The requirement for the PPRC report is not included.

In addition, the conference agreement requires the Secretary to fully develop and refine by December 31, 1993 the relative values for the full range of pediatric services. The Secretary is required to conduct a study of the relative values for pediatric and other services to determine whether there are significant variations in the resources used in providing similar services to different populations. In conducting the study, the Secretary is to consult with appropriate organizations representing pediatricians and other physicians and submit a report to Congress by January 1, 1994.

The conference agreement would also specify that payments for antigens and related services are to be paid under the physician fee schedule effective January 1, 1994.

5. Extra billing

PRESENT LAW

(a) Limitations on beneficiary liability.—OBRA '89 established limits on the amount above the Medicare approved payment amount nonparticipating physicians may charge Medicare beneficiaries. OBRA 89 permitted the Secretary to impose sanctions on physicians who knowingly and willfully bill above the limiting charge on a repeated basis. However, it did not specifically prohibit physicians from billing beneficiaries more than the limiting charge. OBRA 89 also did not require physicians to make refunds to beneficiaries when they billed above the limiting charge and did not absolve beneficiaries from liability for amounts they are billed above the medicare limiting charge.

(b) Pre-Payment Screening of Claims.—Carriers are not currently required by law to screen unassigned claims submitted by nonparticipating physicians prior to payment in order to determine whether the amount billed exceeds the limiting charge.

(c) Information Regarding Limiting Charges.—There is currently no requirement that beneficiaries be given information on the explanation of Medicare benefits (EOMB) form if physicians have charged beneficiaries in excess of the limiting charge.

(d) Medicare Beneficiary Advisory Council.—No provision.

(e) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule.—The five percent differential in payments to nonparticipating physicians and suppliers does not apply to nonphysician services furnished under the Medicare physician fee schedule. These services generally consist of the technical components of services, such as services rendered by free-standing radiology centers or independent physiological laboratories.

(f) Clarification of Mandatory Assignment Rules for Certain Practitioners.—There is some ambiguity in current law regarding the application of mandatory assignment rules for certain nonphysician practitioners.

HOUSE BILL

No provision.

SENATE AMENDMENT

(a) Limitations on Beneficiary Liability.—Prohibits nonparticipating physicians from billing or collecting from any person an actual charge in excess of the Medicare limiting charge. The provision would specify that no person is liable for payment of any amount billed in excess of the limiting charge. It would also require physicians who bill or collect amounts exceeding the limiting charge by more than $1 to: (1) refund the full amount collected in excess of the limiting charge; (2) reduce the outstanding balance owed to the physician for other items and services furnished to the individual by the amount of the charge exceeding the limiting charge and refund any amount in excess of the outstanding balance; or (3) in the case of where the excess charges have not been collected by the physician, reduce the actual charge billed for the service to the amount approved by Medicare.

Requires carriers to notify a physician within 30 days if the physician has billed in excess of the limiting charge by at least $1. The physician would be required to refund or credit excess charges within 30 days unless the physician submits documentation supporting application of a different limiting charge to the carrier within 15 days of receipt of the notice of overcharge. In the case of a physician who submits documentation questioning the limiting charge, the carrier would be required to respond to the physician within 30 days with a determination of agreement or disagreement with the physician's documentation regarding the limiting charge.

Specifies that is a physician (1) knowingly and willfully bills in excess of the limiting charge; (2) collects charges exceeding the limiting charge on a repeated basis; or (3) fails to comply with the refund requirements the Secretary would be authorized to impose sanctions in accordance with Section 1842(j) of the Social Security Act.

(b) Pre-Payment Screening of Claims.—Requires carriers to screen 100 percent of unassigned claims submitted by nonparticipating physicians prior to making payment to determine whether the amount billed exceeds the limiting charge.

(c) Information Regarding Limiting Charges.—Requires carriers to provide limiting charge information on the explanation of Medicare benefits form after the submission of an unassigned claim which exceeds the limiting charge by at least $1.

Requires the Secretary to report to Congress annually on the extent to which annual charges exceeded limiting charges, the number and types of services involved, and the average amount of excess charges.

(d) Medicare Beneficiary Advisory Council.—Creates a Medicare Beneficiary Advisory Council composed of 15 Medicare beneficiaries. The Secretary is required to appoint members to the Council based on nominations submitted by organizations representing elderly and disabled populations. The Council is required to meet once each quarter to discuss proposed regulations, carrier manual instructions, and any other issues with a direct or indirect impact

on delivery, cost, quality, or expansion of Medicare services. To the extent feasible and consistent with statutory deadlines, the consultation is to occur before the publication of proposed changes. Reimbursement to council members would be the same as for other members of advisory councils established by the Secretary.

(e) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule.—Applies the 5 percent differential between payments to participating and nonparticipating physicians and suppliers and limiting charge restrictions to the technical components of nonphysician services paid on the basis of the physician fee schedule.

(f) Clarification of Mandatory Assignment Rules for Certain Practitioners.—Specifies that physicians' assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers and clinical psychologists may only bill for services on an assignment-related basis and that no person is liable for amounts billed in violation of the assignment-related basis. The Secretary may impose sanctions under Section 1842(j) of the Social Security Act on a practitioner who knowingly and willfully bills in violation of this requirement.

Effective date.—Applies to services furnished on or after January 1, 1993, except for (d) which is effective on enactment.

CONFERENCE AGREEMENT

(a) Limitations on Beneficiary Liability.—The conference agreement includes the Senate amendment with an amendment. The agreement does not specify the $1 trigger for violation of the balance billing limits in the statutory language. However, the conferees understand that Medicare carriers currently ask for a refund where the actual charge exceeds the limiting charge by at least one dollar. Similarly, Medicare carriers include information on the Explanation of Medicare benefits form where the limiting charge exceeds the actual charge by at least one dollar. The conferees believe that the use of a one dollar nominal threshold before application of the refund provision (as well as for the reduction of an actual charge where the physician has not collected and for the EOMB) is an appropriate policy that would be consistent with the intention of this provision.

The agreement revises the provision relating to timeliness of refunds to specify that a refund is considered to be provided on a timely basis if the reduction or refund is made not later than 30 days after the date the physician, supplier, or other person is notified by the carrier of the violation. The provision clarifies that the refund requirement does not apply to other third party payers. The provision relating to the physician response to the carrier notice is revised. The agreement clarifies the sanctions provisions.

The agreement makes it clear that the limiting charge policy and enforcement thereof applies to the physician, supplier or supplier or other person performing the service as well to any person billing or receiving payment on behalf of such physician, supplier, or person.

The agreement requires that a refund be made to the individual charged if there is a charge in excess of the limiting charge.

(b) Prepayment screening of claims.—The conference agreement includes the Senate amendment.

(c) Information Regarding Limiting Charges.—The conference agreement includes the Senate agreement with an amendment making explicit the requirement that the EOMB include information on the beneficiary's right to a refund.

(d) Medicare Beneficiary Advisory Council.—The conference agreement does not include the Senate amendment.

(e) Applying the Limiting Charge to Nonphysician Services Furnished Under the Physician Fee Schedule.—The conference agreement includes the Senate amendment. The agreement extends the extra billing limits and participation differential so that they apply to any nonparticipating supplier or other person who furnishes a physician's service that is paid for under the physician fee schedule, or services that would be paid under the fee schedule but have been excluded from the fee schedule by the Secretary.

(f) Clarification of Mandatory Assignment Rules for Certain Practitioners.—The Conference agreement includes the Senate amendment with clarifying language.

In addition, the conference agreement includes provisions relating to administration of claims relating for physicians' services. The agreement prohibits the Secretary from imposing any fees related to the filing of claims for physicians' services, for claims errors or denials, for administrative appeals, for obtaining unique identifier numbers, or for responding to inquiries concerning the status of pending claims.

In addition, the agreement clarifies the conditions under which the Secretary can recognize substitute billing arrangements between two physicians. Such substitute billing arrangements must either be informal, reciprocal, coverage agreements or per diem or other fee-for-time agreements. The duration of such agreements is limited to 60 continuous days, and claims for services provided pursuant to such agreements must include the unique identifying number of both physicians. These requirements are effective for services provided under such arrangements in the first month beginning more than 60 days after the enactment of this Act.

6. Durable medical equipment

PRESENT LAW

(a) Standards for Obtaining Supplier Numbers.—There are no statutory standards that suppliers of durable medical equipment (DME), prosthetic devices, prosthetics and orthotics, surgical dressings, splints, casts, and other devices for fractures and dislocations, home dialysis supplies, and immunosuppressive drugs must meet in order to supply items to Medicare beneficiaries.

(b) Uniform National Coverage and Utilization Review Requirements for 200 Selected Items.—There are no uniform coverage or utilization review criteria in current DME law. HCFA is currently in the process of developing uniform coverage (b) Prepayment screening of claims and utilization review policies for 100 items of its own choosing.

(c) Standardized Certificates of Medical Necessity.—There are currently no standardized medical necessity certificates.

(d) Distribution of Certificates of Medical Necessity.—OBRA 90 prohibited suppliers of durable medical equipment from distributing, for commercial purposes, completed or partially completed certificates of medical necessity to physicians or Medicare beneficiaries.

(e) GAO Studies.

(i) Supplies and Services in Nursing Facilities.—No provision.

(ii) Variations in Quality of Equipment.—No provision.

(f) Modification of Anti-Kickback Law.—Current law exempts employees in bona-fide employment relationships from penalties assessed for knowingly and willfully soliciting or receiving remuneration (including kickbacks, bribes, or rebates) or offering or paying remuneration as an incentive for Medicare business.

(g) Limitations on Beneficiary Liability.—There are no limits on balance billing for medical equipment and supplies, and there are no circumstances specified in current law under which beneficiaries are not liable for charges for items furnished by suppliers on an unassigned basis.

(h) Prohibition Against Multiple Billing Numbers.—No provision.

(i) Treatment of Nebulizers and Aspirators.—There are five categories in the DME fee schedule. Aspirators and nebulizers are in a category entitled items requiring frequent and substantial servicing. These items may only be rented on the grounds that they require frequent servicing in order to avoid imminent danger to a beneficiary's health.

(j) Application of National Payment Limits to Some Items of Prosthetics and Orthotics.—Ostomy supplies, tracheotomy supplies, urologicals, surgical and other medical supplies are included in the prosthetics and orthotics fee schedule, which is subject to regional payment limits.

(k) Parenteral and Enteral Nutrients, Supplies and Equipment.—Payment for parenteral and enteral nutrients, supplies and equipment is made on the basis of reasonable charges, updated by the CPI–U.

HOUSE BILL

No provision.

SENATE AMENDMENT

(a) Standards for Obtaining Supplier Numbers.—Requires the Secretary to revise, by January 1, 1995, uniform national standards for suppliers of these items. The standards would require suppliers to (1) comply with all applicable State and Federal licensure and regulatory requirements; (2) maintain a physical facility and inventory on an appropriate site; (3) have proof of appropriate liability insurance; (4) meet other requirements established by the Secretary. In addition, beginning July 1, 1993, suppliers will not be reimbursed for these items unless they have a Medicare provider number.

(b) Uniform National Coverage and Utilization Review Requirements for 200 Selected Items.—Requires the Secretary, in consultation with representatives of DME suppliers, beneficiaries and medical specialty organizations, to develop and establish uniform national coverage and utilization review criteria for 200 items of DME, prosthetic devices, prosthetics and orthotics, and surgical dressings. The criteria are to be published as instructions to carriers and intermediaries, and no further publication, including Federal Register publication, would be required.

Specifies that the Secretary may select an item for coverage if: (1) the item is frequently rented or purchased by beneficiaries; (2) the item is frequently subject to a determination that it is not medically necessary; or (3) coverage or utilization review criteria applied to the item is not consistent among carriers. The Secretary would be required annually to review and determine whether items not on the list should be subject to uniform national coverage and utilization review criteria and to subject them to these criteria if necessary. The Secretary would also be required to submit a report to Congress by January 1, 1994 analyzing the impact of these uniform criteria on the utilization of items subject to the criteria by Medicare beneficiaries.

(c) Standardized Certificates of Medical Necessity.—Requires the Secretary to develop, by July 1, 1993, one or more standardized certificates of medical necessity for durable medical equipment, prosthetic devices, orthotics and prosthetics, and surgical dressings and other devices (to be completed by the prescribing physician) if a certificate of medically necessity is required by the Secretary.

(d) Distribution of Certificates of Medical Necessity.—Extends the OBRA 90 provision prohibiting DME suppliers from distributing medical necessity forms to suppliers of prosthetics and orthotics and prosthetic devices. Modifies the prohibition provision by permitting suppliers to complete information identifying beneficiaries and suppliers, a description of the item, a product code identifying the item, and any other information required by the Secretary. If a supplier provides any of the above information on a certificate of medical necessity, the supplier would be required to include the actual purchase or rental price paid by Medicare prior to distribution to the physician for completion.

(e) GAO Studies.

(i) Supplies and Services in Nursing Facilities.—Requires the Comptroller General to study and report to Congress by January 1, 1994 on the types, volume and utilization of services and supplies furnished under contract or under arrangement with suppliers to Medicare beneficiaries residing in skilled nursing facilities and nursing facilities.

(ii) Variations in Quality of Equipment.—Requires the Comptroller General to study and report to Congress by July 1, 1994 on whether changes made by the Department of Health and Human Services to the descriptions of HCPCS codes for DME, prosthetics and orthotics, prosthetic devices and surgical dressings covered by Medicare (1) accurately reflect the items being furnished under the codes; and (2) are sufficiently explicit to distinguish between items of varying quality and price. GAO's evaluation would not begin before July 1, 1993; its report to Congress would be due by July 1,

1994. The Comptroller General would also be required to make recommendations for additional changes to improve the descriptions of codes.

(f) Modification of Anti-Kickback Law.—Specifies that the exemption from anti-kickback penalties for employees in bona-fide employment relationships with providers of Medicare-covered services and supplies does not include the tasks of transmitting assignment rights of Medicare beneficiaries to suppliers of covered items, or performing warehousing or stock inventory functions.

(g) Limitations on Beneficiary Liability.—Stipulates circumstances under which Medicare beneficiaries are not financially liable for covered items furnished by a supplier on an unassigned basis. Unless suppliers inform beneficiaries in advance that an item is not covered by Medicare and beneficiaries choose to accept responsibility for paying for the item, beneficiaries are not obligated to pay for an item if: (1) the supplier is excluded from Medicare participation; (2) Medicare has denied payment for the item in advance; or (3) the supplier does not meet Medicare standards for suppliers of medical equipment and supplies.

(h) Prohibition Against Multiple Billing Numbers.—Prohibits the Secretary from issuing more than one billing number to any supplier, unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

(i) Treatment of Nebulizers and Aspirators.—Removes aspirators and nebulizers from the category of DME items requiring frequent and substantial servicing and includes disposable supplies used in conjunction with aspirators and nebulizers in the category of inexpensive and other routinely purchased equipment.

(j) Application of National Payment Limits to Some Items of Prosthetics and Orthotics.—Subjects ostomy supplies, tracheotomy supplies, urologicals, surgical dressings, splints, casts and other devices for reduction of fractures to national payment limits. For surgical dressings, splints, casts and other devices for reduction of fractures, average reasonable charges for the six-month period ending June 30, 1992, increased by the covered item update for 1993, will be used as the base period for calculating national payment limits.

(k) Parenteral and Enteral Nutrients, Supplies and Equipment.—Eliminates the 1993 payment update for parenteral and enteral nutrients, supplies and equipment.

Effective date.—(a) Effective beginning after December 31, 1994 for each supplier applying for or renewing a supplier number. (b) Enactment. (c) Applies to certificates of medical necessity on or after July 1, 1993. (d) Applies to certificates of medical necessity on or after January 1, 1993. (e) Enactment. (f), (j), (k) Effective for items and services furnished on or after January 1, 1993. (g), (h), (i) Effective for items and services furnished on or after July 1, 1993.

CONFERENCE AGREEMENT

(a) Standards for Obtaining Supplier Numbers.—The conference agreement follows the Senate amendment, with modifications (1) to clarify that the requirement for suppliers to obtain a supplier

number does not apply to medical equipment and supplies furnished as an incident to a physician's service, and (2) to specify that the requirement for supplier numbers applies to durable medical equipment, prosthetic devices, orthotics and prosthetics, surgical dressings, such other items as the Secretary may determine, and home dialysis supplies and equipment and immunosuppressive drugs. The conferees understand that the revised supplier standards would apply to all new suppliers beginning January 1, 1995 and to current suppliers as they renew their supplier numbers. The renewal of supplier numbers for current suppliers will be phased in over a two-year period.

In addition, the conference agreement includes an amendment to prohibit suppliers from making unsolicited telephone contacts with Medicare beneficiaries, unless the individual gives permission to the supplier, or the supplier has furnished the individual with a covered item within the preceding 15 months. Medicare can not pay for items provided subsequent to a prohibited telephone contact. The Secretary is required to exclude from programs under the Social Security Act suppliers who knowingly make prohibited telephone contacts to such an extent that the supplier's conduct establishes a pattern of contacts in violation of the prohibition. Beneficiaries are not liable for the cost of items provided as a result of prohibited telephone contacts, and the supplier must refund any amounts collected on a timely basis or be subject to certain sanctions.

The conference agreement also authorizes the Secretary to designate by regulation one carrier for one or more entire regions to process all claims within the region for covered durable medical equipment, prosthethic devices, and orthotics and prosthetics. Suppliers are required to submit claims to the carrier having jurisdiction over the geographic area that includes the permanent residence of the patient to whom the item is furnished.

(b) Uniform National Coverage and Utilization Review Requirements for 200 Selected Items.—The conference agreement includes the Senate amendment.

(c) Standardized Certificates of Medical Necessity.—The conference agreement follows the Senate amendment with an amendment to delete language requiring certificates to be completed by the prescribing physician and transmitted to the supplier and then to the carrier.

(d) Distribution of Certificates of Medical Necessity.—The conference agreement follows the Senate amendment. The prohibition on distributing certificates of medical necessity would continue to apply to overused items. An exception would be granted for nonabused items.

(e) GAO Studies.—

(i) Supplies and Services in Nursing Facilities.—The conference agreement does not include the Senate amendment.

(ii) Variation in Quality of Equipment.—The conference agreement does not include the Senate amendment.

The conference agreement requires the Secretary (1) to conduct a study and report to Congress on the effects of the methodology for determining payments for durable medical equipment items and supplies on the ability of persons entitled to disability benefits

to obtain equipment, including customized equipment; and (2) to submit to Congress a report describing items of durable medical equipment treated as prosthetic devices or othotics and prosthetics for purposes of determining the amount of payment for such items under Part B of Medicare that do not require individualized or custom fitting and adjustment.

(f) Modification of Anti-Kickback Law.—The conference agreement follows the Senate amendment with a modification to specify that the exemption from anti-kickback penalties for employees in bona-fide employment relationships with providers of Medicare covered services does not include the tasks of transmitting assignment rights of Medicare beneficiaries to suppliers of covered items, or performing warehousing or stock inventory functions in the case of a contract supply arrangement between any entity and a supplier of durable medical equipment and supplies.

(g) Limitations on Beneficiary Liability.—The conference agreement follows the Senate amendment with a modification to apply the refund policy related to prohibited phone contacts to limitations on beneficiary liability.

(h) Prohibition Against Multiple Billing Numbers.—The conference agreement follows the Senate amendment with an amendment to prohibit the Secretary from delegating the responsibility to issue supplier numbers to any non-governmental entity.

(i) Treatment of Nebulizers and Aspirators.—The conference agreement includes the Senate amendment with a technical clarification that specifies that separate payment will be made for accessories used in conjunction with nebulizers and aspirators. The conferees do not intend to interfere with the Secretary's existing authority for payment for accessories for other durable medical equipment items and supplies by granting explicit statutory authority for payment of accessories used in conjunction with nebulizers and aspirators.

(j) Application of National Payment Limits to Some Items of Prosthetics and Orthotics.—The conference agreement follows the Senate amendment, with a modification that specifies that payment for surgical dressings shall be made in a lump sum in an amount equal to 80 percent of the lesser of the actual charge for the item or the national payment limit (computed based on local payment amounts using average reasonable charges for the 6-month period ending June 30, 1992, increased by the covered item update for 1993).

(k) Parenteral and Enteral Nutrients, Suppliers and Equipment.—The conference agreement includes the Senate amendment.

In addition, the conference agreement reduces the DME fee schedule amount for transcutaneous electrical nerve stimulation (TENS) devices by 30 percent.

The conference agreement also includes an amendment to clarify that the authority for adjustments for inherent reasonableness apply to durable medical equipment fee schedules and that such adjustments are to be based on the prices and costs applicable at the time the item is furnished. The Secretary is also required to determine whether the payment amounts for decubitus care mattresses, transcutaneous electrical nerve stimulators, and any other items considered appropriate by the Secretary are inherently rea-

sonable and to adjust payments for these items if the amounts are not inherently reasonable.

7. Designation of certain hospitals as eye and ear hospitals

PRESENT LAW

Hospitals designated as eye and ear hospitals receive a blended payment rate for ambulatory surgery for which 75 percent is based on the hospital's costs and 25 percent is based on the rate paid to freestanding Ambulatory Surgery Centers (ASCs). This special rule applies for cost reporting periods beginning on or after October 1, 1988 and before January 1, 1995. In general, the blended payment rate to hospitals for outpatient surgery is based 42 percent on costs and 58 percent on the ASC rate. To receive designation as an eye or ear hospital, a facility must specialize in these services, receive more than 30 percent of its revenue from outpatient services, and must have been an eye or ear hospital on October 1, 1987.

HOUSE BILL

No provision.

SENATE AMENDMENT

Extends eligibility for designation to hospitals that otherwise meet the criteria but on October 1, 1987, operated as a physically separate or distinct eye and ear unit of a general acute care hospital which has since discontinued its other acute care operations.

Effective date.—Effective for services furnished on or after January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment.

8. Extension of payment limit for intraocular lenses (IOLs)

PRESENT LAW

OBRA 90 established a payment limit of $200 for intraocular lenses inserted during 1991 and 1992.

HOUSE BILL

No provision.

SENATE AMENDMENT

Extends the $200 payment limit for 1993 and 1994.

Effective date.—Effective as if included in OBRA 90.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment.

9. Nurse-midwife services

PRESENT LAW

OBRA 87 provided for direct reimbursement of certified nurse midwives under both Medicare and Medicaid. The statutory definition of certified nurse midwives limits services to those regarding the care of mothers and babies during the maternity cycle, but the definition of covered services does not contain the restriction regarding the maternity cycle.

HOUSE BILL

No provision.

SENATE AMENDMENT

Modifies the definition of covered nurse midwife services, effective January 1, 1994, by eliminating the restriction that services include only those regarding the care of mothers and babies during the maternity cycle.

Effective date.—Effective for services furnished on or after January 1, 1994.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

10. Clarifying payments for medically-directed certified registered nurse anesthetists

PRESENT LAW

OBRA 90 set payment levels for both non-medically directed certified registered nurse anesthetists (CRNAs) and medically directed CRNAs. Payment levels for non-medically directed CRNAs were set at 100 percent of the amount paid to physicians for providing the same service and payments to medically directed CRNAs were set at 70 percent of the amount paid to physicians. These services are paid on the basis of a fee schedule which contains a dollar conversion factor. OBRA 90 specified the dollar conversion factors for these payments through 1997 based on the amount physicians would be paid for these services. Since that time, however, the actual amounts paid to physicians for these services have been lowered as a result of refinements to physician payments. As a result, the dollar conversion factors specified in the law are too high. However, since OBRA 90 also contains a provision which specifies that payments to CRNAs may not exceed the amount paid to physicians for the same service, only payments to medically directed CRNAs require a statutory correction.

HOUSE BILL

No provision.

SENATE AMENDMENT

Specifies that the conversion factor used to determine payments to medically-directed CRNAs would be frozen at $10.75, from 1993 through 1997. This is the same conversion factor used in 1992.

Effective date.—Effective for services furnished on or after January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with an amendment that continues the update factor for physician anesthesia services for 1997 and subsequent years.

11. Extension of Alzheimer's demonstration projects

PRESENT LAW

ORBA 86 authorized $40 million to conduct up to 10 Alzheimer's disease demonstration projects to provide comprehensive services to Medicare beneficiaries with Alzheimer's disease. The demonstrations were originally authorized for three years, but were extended an additional year in OBRA 90.

HOUSE BILL

No provision.

SENATE AMENDMENT

Extends the Alzheimer's disease demonstration projects for an additional year.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment.

In addition, the conference agreement includes a provision to extend the Medicare Influenza Vaccination Demonstration for 6 months, until April 1, 1993.

12. Nurse practitioners and physicians' assistants

PRESENT LAW

Under current law, nurse practitioners and clinical nurse specialists working in collaboration with a physician and physicians' assistants working under the supervision of a physician may bill Medicare Part B if they are working in specified settings. Payment may not be made directly to physicians' assistants, but must be made to the person or entity employing the physicians' assistant. Payment for nurse practitioners, clinical nurse specialists, certified nurse-midwives and physicians' assistants must be made on an assignment-related basis and are subject to Part B coinsurance and deductible requirements.

Reimbursement varies with the setting in which services are performed. For services provided by physicians' assistants serving as an assistant-at-surgery, payment is limited to the lesser of the

actual charge or 65 percent of the amount that would be paid to a physician serving as an assistant-at-surgery. For services rendered in hospitals, other than as an assistant-at-surgery, payment is limited to the lesser of the actual charge or 75 percent of the amount paid to physicians for performing that service. In all other settings, payment is limited to the lesser of the actual charge or 85 percent of the amount that would be paid to physicians for performing that service.

Employers of physicians' assistants may bill Medicare Part B directly for services performed in a rural health professional shortage area (HPSA). Nurse practitioners and clinical nurse specialists may bill Medicare Part B for services performed in a rural area, including hospitals. Physicians who employ physicians' assistants, nurse practitioners and clinical nurse specialists may bill Medicare for services provided by these practitioners as incident to physicians' services.

HOUSE BILL

No provision.

SENATE AMENDMENT

Expands the settings in which nurse practitioners, clinical nurse specialists and physicians' assistants may bill Medicare Part B for services performed to include all outpatient settings. Payment for services in settings not already authorized in law would be established at 80 percent of: (a) the lesser of the actual charge; or (b) 85 percent of the fee schedule amount that would be paid if the services were performed by a physician. Nurse practitioners and clinical nurse specialists would be permitted to bill Medicare independently, but only on an assignment-related basis. Services rendered by physicians' assistants must also be billed on an assignment-related basis by the person employing a physician's assistant, as in current law.

Effective date.—Effective for services furnished on or after January 1, 1994.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

13. Oral cancer drugs

PRESENT LAW

Under current law, Medicare coverage for outpatient prescription drugs (with some exceptions for immunosuppressive drugs and erythropoietin) is limited to drugs which can not be self-administered. Drugs which can be taken orally are not covered.

HOUSE BILL

No provision.

SENATE AMENDMENT

Extends Medicare coverage for oral cancer drugs if they are the same chemical entity as anticancer drugs covered by Medicare when administered intravenously. The proposal would also require uniform Medicare coverage for "off-label" cancer drugs if such drugs have been approved by the Food and Drug Administration (FDA), have appeared in specified peer-reviewed medical journals, or are included in one of the three specified major medical compendia.

Effective date.—Effective for items furnished on or after January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment with an amendment. The amendment excludes the provisions relating to coverage of "off-label" drugs.

14. Other provisions relating to Part B of the Medicare program

(a) Part B Premium Penalty for Late Enrollment.—The conference agreement caps the delayed enrollment penalty at 25 percent for Federal employees who meet the following conditions. First, at the time of the initial enrollment period, the individual delayed enrollment because he or she was enrolled in a group health plan that provided items or services covered under Part B. Second, the individual was enrolled in a group health plan that stopped providing coverage of such services subsequent to the individual's initial enrollment period.

The conference agreement includes provisions related to the Part B premium penalty for delayed enrollment. The agreement permits the Secretary, upon the request of a State to enter into an agreement with the State under which the State agrees to pay on a quarterly or other periodic basis to the Secretary an amount equal to the Part B delayed enrollment penalty with respect to individuals specified in the agreement with the State. Individuals covered under such an agreement would not be subject to a delayed enrollment penalty.

(b) Coverage of Speech-language Pathologists and Audiologists.—The conference agreement changes the term "speech pathologist" to "speech-language pathologist" where it appears, except that this amendment would not change the definition of services covered in any setting. A statutory definition of speech-language pathologists and audiologists would be established, consistent with current coverage guidelines.

(c) Municipal Health Service Demonstration Projects.—The conference agreement extends the waivers for the four municipal health service demonstration projects through December 31, 1997. In conducting the study mandated under OBRA 89, HCFA would include consideration of costs to Medicaid and other payers, access to care, outcomes, beneficiary satisfaction, and utilization differences among the different populations being served by the centers.

(d) Treatment of Certain Indian Health Programs and Facilities as Federally Qualified Health Centers.—The conference agreement revised the current definition of Federally Qualified Health

Centers to include programs and facilities operated by Indian tribes under the Indian Self-Determination Act.

15. Other technical provisions pertaining to physician payments

PRESENT LAW

(a) Overvalued Procedures.—OBRA 90 subjected all unsurveyed overvalued services to a 6.5 percent reduction unless the law specifically exempted them from the reduction. Unsurveyed services are those not included in earlier surveys conducted to determine relative values of physicians' services; these unsurveyed services were considered to be overvalued. The list of services specifically exempted from the 6.5 percent reduction contained certain errors.

(b) Radiology Services.—OBRA 90 reduced the conversion factor for radiology services paid on the basis of a radiology fee schedule to a geographically adjusted amount, not to exceed 9.5 percent. However, as drafted, OBRA 90 contained an error that permits the conversion factors for services below the target to increase.

(c) Anesthesia Services.—OBRA 87 established a fee schedule for anesthesia services based on a relative value guide for anesthesia services and local conversion factors. OBRA 90 reduced local conversion factors to a geographically adjusted amount, not to exceed 9.5 percent. However, as drafted, OBRA 90 contained an error that permits the conversion factors for services below the target to increase.

(d) Assistants at Surgery.—OBRA 90 specified that payment to a physician serving as an assistant at surgery cannot exceed 16 percent of the payment made for the global surgical service.

(e) Technical Components of Diagnostic Services.—OBRA 90 capped the reasonable charge for technical components of specified diagnostic services at the national median charge for the service in all localities.

(f) Statewide Fee Schedules.—OBRA 90 required the Secretary to treat the States of Nebraska and Oklahoma as statewide payment localities if they met certain requirements specified in the law. Each member of the Congressional delegation from those States and organizations representing urban and rural physicians would have to agree to the statewide locality provision. This requirement raised constitutional concerns relating to the separation of powers between the executive and legislative branches.

(g) Reciprocal Billing Arrangements.—OBRA 90 permitted physicians to submit a claim for a service provided by a second physician when the first physician was not available to provide the service. Such billing was permitted only in cases where the arrangement is temporary and reciprocal.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.—OBRA 90 required the Secretary to study the effects of aggregating physician claims and report to Congress by December 31, 1992.

HOUSE BILL

No provision.

SENATE AMENDMENT

(a) Overvalued Procedures.—Deletes some procedures from the list of exempted services and corrects errors in the names of other services. The procedures deleted from the list of exempted services are: lobectomy; enterectomy; colectomy; cholecystectomy; and sacral laminectomy.

(b) Radiology Services.—Specifies that conversion factors below the geographically adjusted amount could not be increased. The provision makes other technical changes to OBRA 90.

(c) Anesthesia Services.—Specifies that conversion factors below the geographically adjusted amount could not be increased. The provision makes other technical changes to OBRA 90.

(d) Assistants at Surgery.—Clarifies that balance-billing limits apply to physicians serving as assistants at surgery.

(e) Technical Components of Diagnostic Services.—Specifies that the limits on payment for the technical component of diagnostic services do not apply to services whose payments were reduced under the OBRA 89 overvalued procedure list.

(f) Statewide Fee Schedules.—Eliminates the OBRA 90 requirement for agreement from members of Congress and stipulates instead that Nebraska and Oklahoma were statewide localities in 1991.

(g) Reciprocal Billing Arrangements.—Amends OBRA 90 to clarify services that may be covered under reciprocal billing. All physician services, including services incident to physician services, would be covered. The provision would also permit reciprocal billing arrangements that are both informal or reciprocal (as in current law) or involve per diem or other fee-for-time compensation.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.—Changes the date that the study must be submitted to Congress from December 31, 1992 to December 31, 1993.

Corrects a number of technical and drafting errors contained in OBRA 90 through minor and conforming amendments.

CONFERENCE AGREEMENT

(a) Overvalued Procedures.—The conference agreement follows the Senate amendment.

(b) Radiology Services.—The conference agreement follows the Senate amendment.

(c) Anesthesia Services.—The conference agreement follows the Senate amendment.

(d) Assistants at Surgery.—The conference agreement follows the Senate amendment.

(e) Technical Components of Diagnostic Services.—The conference agreement follows the Senate amendment.

(f) Statewide Fee Schedules.—The conference agreement follows the Senate amendment.

(g) Reciprocal Billing Arrangements.—The conference agreement follows the Senate amendment.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.—The conference agreement follows the Senate amendment.

16. Other technical amendments relating to durable medical equipment

PRESENT LAW

(a) Updates to Payment Amounts.—OBRA 90 contains a drafting error that specified that the update to the durable medical equipment fee schedule for 1991 and 1992 was minus 1 percent.

(b) Potentially Overused Items and Advance Determinations of Coverage.—OBRA 90 included two provisions regarding special carrier review of potentially overutilized items and advance determinations of coverage for certain items. These two provisions were combined in drafting so that they do not properly reflect the conference agreement.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.—OBRA 90 provided for a system of upper and lower limits on DME fees. The OBRA 90 conferees agreed to a study of regional variations in DME equipment supplier costs which was not included in the statutory language.

(d) Oxygen Retesting.—OBRA 90 included a provision requiring periodic retesting of beneficiaries receiving oxygen if their initial blood gas reading value was at or above a partial value of 55.

HOUSE BILL

No provision.

SENATE AMENDMENT

(a) Updates to Payment Amounts.—Corrects the OBRA 90 error by specifying that the 1991 and 1992 update is the CPI–U minus one percentage point.

(b) Potentially Overused Items and Advance Determinations of Coverage.—Modifies OBRA 90 with respect to treatment of potentially overused items. The Secretary may add items to the list of potentially overused items if they are marketed directly to beneficiaries, if offers to waive coinsurance are made, if items have been subject to consistent patterns of overutilization, or if a high proportion of claims for an item are denied based on absence of medical necessity. Payment for items on this list cannot be made unless the carrier has subjected the claim to special scrutiny or has determined in advance whether an item is medically necessary and covered by Medicare. Carriers would also be required to make advance coverage decisions for customized items and to meet criteria developed by the Secretary to assure that advance coverage decisions are made on a timely basis.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.—Requires HCFA to collect data on supplier costs for DME and analyze them to determine costs attributable to service and product components and the extent to which they vary by type of equipment and geographic region. The HCFA administrator would be required to submit a report and recommendations for a geographic cost adjustment index for DME supplies and an analysis of the impact of such an index on Medicare payments.

(d) Oxygen Retesting.—Corrects the OBRA 90 language regarding the arterial blood gas values to require retesting when a beneficiary's initial value is at or above 56.

Also makes technical corrections to Sections 4152 and 4153 of OBRA 90.

CONFERENCE AGREEMENT

(a) Updates to Payment Amounts.—The conference agreement includes the Senate amendment.

(b) Potentially Overused Items and Advance Determinations of Coverage.—The conference agreement includes the Senate amendment.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.—The conference agreement includes the Senate amendment.

(d) Oxygen Retesting.—The conference agreement includes the Senate amendment.

17. Technical amendments relating to ambulatory surgical centers

PRESENT LAW

(a) Payment Amounts.—Current law requires the Secretary to update ambulatory surgery center payment rates by July 1, 1987 and annually thereafter, as determined appropriate by the Secretary. The OBRA 90 conferees had intended to include a provision requiring an annual update to ASC rates, but it was omitted from the law.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.—OBRA 90 included a provision capping payments for IOLs at $200 in 1991 and 1992. As drafted, the statutory language could be interpreted as limiting payments for cataract surgery to $200. The OBRA 90 conferees also agreed to a provision providing for a process by which the fee for new technology intraocular lenses (IOLs) could be adjusted. Statutory language reflecting this agreement was inadvertently omitted from OBRA 90.

HOUSE BILL

No provision.

SENATE AMENDMENT

(a) Payment Amounts.—Establishes the update for ambulatory surgery services, beginning with fiscal year 1994, at the CPI-U for the 12 month period ending with March of the preceding year. The Secretary would be required to conduct a survey, based on a representative sample of procedures and facilities, beginning by July 1, 1993 and updated every 5 years thereafter, of the actual audited costs of ambulatory surgery facilities. The survey results would be used in establishing payment rates. The Secretary would be required to consult with appropriate trade and professional organizations in updating the list of procedures that can be performed in ambulatory surgery centers.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.—Requires the Secretary to develop and imple-

ment a process for reviewing reimbursement for new technology intraocular lenses (IOLs). In order to be considered a new technology IOL, the device would have to be approved by the FDA. The Secretary would also be required to consider specific circumstances in determining whether to adjust the payment amount for new technology IOLs. The provision also specifies administrative procedures for reviewing and approving new technology IOLs.

CONFERENCE AGREEMENT

(a) Payment Amounts.—The conference agreement follows the Senate amendment.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.—The conference agreement follows the Senate amendment.

18. Other technical amendments relating to Part B of the Medicare program

PRESENT LAW

(a) Revision of Information on Part B claims.—Each Part B claim for which the entity submitting the claim knows or has reason to believe that there has been a referral by physician must include the name and provider number of the referring physician and must indicate whether the referring physician is an investor in the entity.

(b) Consultation for Social Workers.—OBRA 90 provided for direct reimbursement for the services of clinical psychologists and clinical social workers. The Secretary was required to develop criteria for psychologists' services under which psychologists would be required to consult with a patient's attending physician.

(c) Reports on Hospital Outpatient Payment.—OBRA 87 required the Prospective Payment Assessment Commission (ProPAC) to conduct a study of Medicare payment for hospital outpatient services. Part of the study was to be submitted to Congress by July 1, 1990 and part by March 1, 1991. Section 1135(d)(6) of the Social Security Act also requires the Secretary to report to the Congress on the development of a prospective method for ambulatory surgery services.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.—Payment for outpatient radiology and diagnostic services is limited to a blend of the hospital's costs and physician fee schedule that would apply if the procedure were performed in a physician's office.

(e) Payments to Nurse Practitioners in Rural Areas.—OBRA 90 provided for direct reimbursement of nurse practitioners and clinical nurse specialists in rural areas. While current law excludes the services of physician assistants, nurse midwives, certified registered nurse anesthetists, and psychologists from the definition of inpatient hospital care, payments for nurse practitioners and clinical nurse specialists were not included in this provision.

(f) Other Technical and Conforming Amendments.—Elderly or disabled employees and their spouses who are covered by employer health plans are not required to enroll in the same enrollment

period applicable to others. However, they cannot enroll while enrolled in an employer group health plan. Coverage for such individuals begins generally on he first day of the month in which the individual is no longer enrolled in an employer group health plan. The OBRA 90 conferees intended to modify this provision, but statutory language to that effect was omitted from the law.

HOUSE BILL

No provision.

SENATE AMENDMENT

(a) Revision of Information on Part B Claims.—Requires that the claim form include the unique physician identification number (UPIN) and repeals the requirement that claims indicate whether the referring physician is an investor in the entity.

(b) Consultation for Social Workers.—Requires that clinical social workers consult with a patient's attending physician in the same manner as clinical psychologists.

(c) Reports on Hospital Outpatient Payment.—Repeals Section 6137 of OBRA 89 and Section 1135(d)(6) of the Social Security Act.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.—Clarifies that outpatient payment limits apply to diagnostic services and that the physician component of the limit is based on the resource based relative value scale.

(e) Payments to Nurse Practitioners in Rural Areas.—Adds the services of nurse practitioners and clinical nurse specialists to the list of services excluded from the definition of inpatient hospital services.

(f) Other Technical and Conforming Amendments.—Modifies the special enrollment period to allow individuals who have employer group health coverage to enroll in Part B at any time they are enrolled in the group health plan, rather than after they leave the plan. If an individual enrolls in Part B while enrolled in the group health plan or in the first month after leaving the plan, Medicare coverage would begin on the first day of the month in which the individual enrolled (or, at the option of the individual) on the first day of any of the following three months).

Also makes various technical and conforming amendments to Sections 4154 through 4164 of OBRA 90.

CONFERENCE AGREEMENT

(a) Revision of Information on Part B Claims.—The conference agreement follows the Senate amendment.

(b) Consultation for Social Workers.—The conference agreement follows the Senate amendment.

(c) Reports on Hospital Outpatient Payment.—The conference agreement follows the Senate amendment.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Department.—The conference agreement follows the Senate amendment.

(e) Payments to Nurse Practitioners in Rural Areas.—The conference agreement follows the Senate amendment.

(f) Other Technical and Conforming Amendments.—The conference agreement follows the Senate amendment.

C. Amendments Relating to Parts A and B of the Medicare Program and Other Health Amendments

1. Clarification of self-referral exceptions for physician ownership of clinical laboratories

Present Law

(a) Modification of General Exceptions.—Physicians with certain ownership and/or compensation arrangements with clinical laboratories are prohibited from referring patients to these clinical laboratories.

There are a series of general exceptions to both the ownership and compensation provisions, including: (1) physicians' services provided by (or under the personal supervision of) a physician or another physician in the same group practice; (2) in-office ancillary services; and (3) hospital financial relationships unrelated to the provision of clinical laboratory services. In-office ancillary services are defined as services furnished by the physician himself, another physician in the same group practice, or employees of the physician or the physician's group practice. To be exempted from the referral ban, the services must be provided in a building in which the physician or other member of the group practice provides services unrelated to laboratory services, or in a central building set up by the group to perform ancillary services for its members. The services must be billed by the physician performing or supervising the service or by that physician's group, or by an entity owned by the physician or group practice. In addition, the ownership or compensation interests in such in-office ancillary services must meet other requirements as the Secretary may impose by regulation as needed to protect against patient fraud and abuse.

A number of group practices own and operate satellite facilities in communities other than the community in which the main clinical facility is located.

(b) Rural providers.—In addition to the general exemptions, the law includes specific exemptions from just the ownership prohibitions and specific exemptions from just the compensation provisions. The law includes an exemption under the ownership prohibition for rural providers. Proposed implementing regulations contain provisions directed at preventing possible abuse of this exemption.

(c) Services Under Arrangements.—Some group practices operate full-service laboratories and contract with hospitals and other providers to furnish clinical laboratory services to hospital and other provider patients "under arrangements" with such entities. Medicare requires that the hospital or other provider bill for such services. These "under arrangements" services are therefore not protected under the general exemption for in-office ancillary services.

(d) Shared Laboratory Facilities.—Some group practices, and the hospitals with which they are affiliated, operate a laboratory facility which serves both the hospital inpatients and the group

practice's office patients. Current law does not contain a general exemption for this type of arrangement.

(e) Leasing.—The law includes specific exemptions from just the compensation prohibitions.

(f) Definition of Group Practice.—The law contains a definition of group practice for purposes of the self-referral provision. Under this definition, a group practice is defined as a group of two or more physicians legally organized as partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan or similar association in which: (1) each physician group member furnishes substantially the full range of his or her services through the joint use of shared office space, facilities, equipment, and personnel; (2) substantially all of the services of the physician group members are furnished through the group and billed in the name of the group, with billing receipts treated as receipts of the group; (3) the practice cost expenses and income generated by group members are distributed in accordance with predetermined methodologies; and (4) any additional standards established by the Secretary are satisfied.

Faculty practice plans operated by a hospital fall under the definition of group practice only for those services provided within the faculty practice plan.

The definition of group practice does not specifically address the issue of part-time or independent contractor arrangements. Many group practices, particularly those in smaller communities, arrange for specialists, usually from other communities, to provide services for the group on a part-time basis, usually as independent contractors. Many of these specialists are either already members of another group practice, have their own practice, or have similar contractual arrangements with several smaller group practices.

(g) Reference Laboratories.—No provision.

House Bill

No provision.

Senate Amendment

(a) Modification of General Exceptions.—Exempts ancillary services provided by a group practice with multiple office locations from the prohibition on referrals.

Modifies the exemption for hospital financial relationships unrelated to the provision of clinical laboratory services to include tax-exempt health services entities wholly owned, operated or affiliated with one or more not-for-profit tax exempt hospitals if the financial relationship does not relate to the provision of laboratory services.

Clarifies the billing provision to specify that when services are billed by the group practice, the billing number assigned to the group is to be used.

(b) Rural Providers.—Provides a general exemption for rural laboratories furnishing services in a rural area, as defined for purposes of the hospital prospective payment system.

(c) Services Under Arrangements.—Provides a general exemption for clinical hospital laboratory services provided by a group

practice laboratory under arrangements with hospitals or other Medicare providers. Remuneration under the arrangement must be consistent with fair market value of the services and considered commercially reasonable even if no referrals were made between the two parties.

(d) Shared Laboratory Facilities.—Adds an exemption for shared laboratory services in certain specified cases. Specifically, the services must be provided by a university, a medical school, a nonprofit organization or hospital with an approved medical training program. Further, the laboratory must be used in common under a written arrangement with a group practice whose physician members constitute all, or substantially all, of the medical teaching staff of the university, medical school, organization or hospital.

(e) Leasing.—Creates a new exemption for the rental of equipment by a group practice. In order to qualify for the exemption, payments for the rental or lease of the equipment must be provided pursuant to a written agreement signed by the parties. The agreement must: (1) specify the equipment covered by the agreement and dedicated for use of the lessee; (2) provide for a term of rental or lease of at least one year; (3) provide for payment on a periodic basis of an amount consistent with a fair market value; (4) provide for an amount of aggregate payments that does not vary (directly or indirectly) based on the volume or value of any referrals of business between the parties; and (5) be considered to be commercially reasonable even if no referrals were made between the parties.

(f) Definition of Group Practice.—Modifies the definition of group practice so that two or more physicians providing services in an entity who comply with the other requirements specified in current law would also meet the definition of a group practice. The provision would be further modified to expand the definition of faculty practice plans to include those associated with a university or a medical school in addition to those operated by a hospital.

Prohibits the Secretary from imposing any standard which would have the effect of prohibiting a group practice from contracting with physicians on a part-time or intermittent basis, provided such group practice qualifies to receive Medicare payment for the physicians' services.

Specifies that the practice and overhead expenses of not-for-profit entities should be determined in accordance with methods previously determined by the entity consistent with its articles of incorporation and bylaws.

Clarifies the billing provision to specify that when services are billed by the group practice, the billing number assigned to the group practice is to be used.

(g) Reference Laboratories.—Prohibits the Secretary from including requirements in regulations that would have the effect of prohibiting the acceptance of reference work by group practice laboratories.

Effective date.—Effective as if included in the enactment of Section 6204 of the Omnibus Budget Reconciliation Act of 1989.

CONFERENCE AGREEMENT

(a) Modification of General Exceptions.—The conference agreement includes the Senate amendment with an amendment deleting the provision related to the modification of the exemption for hospital financial relationships unrelated to the provision of clinical laboratory services.

(b) Rural providers.—The conference agreement includes the Senate amendment with an agreement to clarify that to qualify for the exemption, substantially all of the Medicare services furnished by the laboratory are furnished to individuals residing in the rural area.

(c) Services under arrangements.—The conference agreement includes the Senate amendment with a modification. Under the agreement, the definition of group practice is amended to include two or more physicians legally organized as a group who bill in the name of a hospital for which the group provides clinical laboratory services pursuant to an arrangement. The arrangement must meet the following specified requirements. The arrangement must be pursuant to the provision of inpatient hospital services in accordance with Section 1861(b)(3) of the Act. It must have begun before December 19, 1989 and continued in effect without interruption since that date. It must provide substantially all of the clinical laboratory services to the hospital's patients. The arrangement must be pursuant to a written agreement that specifies the services to be provided by the parties and the compensation for services provided under the agreement. The compensation paid over the term of the agreement must be consistent with fair market value; the amount per unit of service must be fixed in advance. The compensation may not be determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties. The compensation must be provided pursuant to an agreement which would be commercially reasonable, even if no referrals we made to the entity. Further, the arrangement must meet such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(d) Shared Laboratory Facilities.—The conference agreement includes the Senate amendment with a modification. Under the agreement a general exemption is provided for shared facility services that are: (i) furnished personally by the referring physician who is a shared facility physician or by another individual personally supervised by such a physician or by another shared facility physician and employed under the shared facility arrangement; (ii) furnished by a shared facility in a building in which the referring physician furnishes physician services unrelated to the furnishing of shared facility services, (iii) furnished to a patient of a shared facility physician; and (iv) billed by the referring physician or by an entity that is wholly owned by such physician. The exemption only applies to a shared facility if the facility and the shared facility arrangement was in effect as of June 26, 1992.

The agreement defines a shared facility arrangement as a financial arrangement: (i) which is only between physicians who are providing services (unrelated to shared facility services) in the same building; (ii) in which the overhead expenses of the facility

are shared, in accordance with methods previously determined by the physicians in the arrangement, among physicians in the arrangement, and (iii) which, in the case of a corporation, is wholly owned and controlled by shared facility physicians.

The agreement further requires the General Accounting Office to conduct a study of the effect of shared facility arrangements on the utilization of health services. The GAO is required to submit a report to Congress on the results of the study by January 1, 1994.

(e) Leasing.—The conference agreement includes the Senate amendment with an amendment. Under the agreement, the current law provisions relating to compensation exemptions are revised. The exemption for the rental of office space is clarified to apply for the use of premises if: (i) the lease is written, signed by the parties and specifies the premises covered by the lease; (ii) the aggregate space rented or leased is reasonable and necessary for the legitimate business purposes of the lease or rental; (iii) the term of the lease is at least one year; (iv) in the case of a lease that is intended to provide access at periodic intervals, such intervals are specified in the lease; (v) the rental charges are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the two parties; (vi) the lease would be commercially reasonable even if no referrals were made between the parties; and (vi) the compensation arrangement meets such other requirements as the Secretary may impose to protect against program or patient abuse.

The agreement adds an exemption for the leasing of equipment. The requirements for the lease of equipment are the same as those applicable to the lease of premises, except that (ii) relates to the equipment rented or leased (rather than the aggregate space).

The agreement adds an exemption for certain arrangements under which payments are made by an entity to a physician (or family member) who is not employed by the entity as compensation for specified services provided the following requirements are met: The agreement is written, and specifies the services to be provided, the compensation for each unit of service, and the schedule for the provision of such services. The compensation must be consistent with fair market value, and is not determined by the volume or value of referrals or other business generated between the two parties. The compensation must be provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity, Further, the compensation must meet other requirements imposed by the Secretary as needed to protect against program or patient abuse. The specified services for which such arrangements are permitted are: (i) consultative services that relate to test results that have been obtained that are outside established parameters, or are specifically requested by the referring physician on a specified patient; that are furnished by a physician other than the referring physician; and for which the physician furnishes a written request for that patient; (ii) interpretation of tissue pathology or Pap smear slides or the provision of other cytology services; (iii) phlebotomy services for paternity or toxicology services testing where the services are furnished by a physician other than the physician referring the individual for such testing; (iv) employ-

ment-related health care services; (v) services as a clinical consultant to the entity as required for certification under the Clinical Laboratory Improvement Act; (vi) services required by State, local, or Federal licensure, and (vi) services billed in the name of a group practice provided by a physician under contract to the group practice for services not otherwise available through a physician who is a member of a group.

The agreement expands the current exemption for compensation arrangements between physicians and hospitals for the provision of administrative services to exempt all bona fide employment arrangements between an employer and an employee, subject to the standards of current law.

The agreement adds an exemption for payments by physicians to (i) a laboratory in exchange for the provision of clinical laboratory services; or (ii) an entity as compensation for other items or services if such items or services are furnished at a price that is consistent with fair market value and are generally available to referrers and referrers alike on similar terms and conditions.

The agreement adds an exemption for payments made to a group practice for pathology services under an agreement if: (i) the agreement is written, specifies the services to be provided, and the compensation for services provided under the agreement; (ii) the compensation paid over the term of the agreement is consistent with fair market value and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the two parties; (iii) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity; and (iv) the compensation agreement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(f) Definition of Group Practice.—The conference agreement includes the Senate amendment with an amendment. The agreement does not include the modification in the definition of group practice. The agreement also does not include the provision relating to the determination of practice and overhead. The conference agreement does not include the language relating to part-time or intermittent employment; the provisions of the agreement relating to compensation arrangement are discussed under (e) above.

(g) Reference Laboratories.—The conference agreement does not include the Senate amendment.

The conference agreement further amends the definition of compensation arrangements involving remuneration only. Remuneration would be defined to not include: (i) the forgiveness of amounts owed for inaccurate tests, mistakenly performed tests, or the correction of minor billing errors; (ii) the provision of items, devices, or supplies of minor value that are used to collect, transport, process or store specimens or communicate the results to the entity; or (iii) the furnishing by an entity of laboratory services to a group practice affiliated with the entity, if the entity provides all or substantially all of the clinical laboratory services of the group practice.

2. Graduate medical education

PRESENT LAW

Payments for the direct costs of graduate medical education are based on Medicare's share of each hospital's direct costs per full-time equivalent (FTE) resident, in a base year, updated each year by the consumer price index. The base year is defined as a hospital's cost reporting period beginning during fiscal year 1984. The law provides for no adjustments to the base year amount. In the case of a hospital that did not have an approved medical residency training program or was not participating in the Medicare program during the base year, the Secretary shall provide for an FTE resident amount as the Secretary determines to be appropriate based on approved FTE resident amounts for comparable programs.

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires the Secretary to provide an FTE resident amount that the Secretary deems appropriate in the case of hospitals which in 1984 operated a primary care residency training program as their only approved residency program and had a base year per resident amount of less than $10,000. In providing an FTE resident amount, requires the Secretary to take into account approved FTE resident amounts for hospitals with comparable residency programs.

Effective date.—Applies to cost reporting periods beginning on or after October 1, 1990, except provides that, for cost reporting periods beginning on or after September 30, 1992, required payments shall not be made prior to October 1, 1993.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the provision is restricted to a facility whose only medical residency program in the cost reporting period that began in fiscal year 1984 was in family and community medicine, received Federal, State or local funding, and had a base year per resident amount of $10,000 or less. The Secretary is required, in computing an FTE resident amount, to estimate the costs that would have been allowed as reasonable if the program had not received government assistance.

The agreement further provides that, in the case of a hospital that did not pay FICA taxes or make other specified retirement contributions for residents in the base year and that must now pay such taxes or contributions as a result of section 11332(b) of OBRA 1990, the Secretary shall redetermine the FTE resident amount to reflect the amount that would be allowed if the hospital had made such payments during the base year.

The agreement provides that, for the purpose of determining whether a resident is in an initial residency period for payment

purposes, a resident in a preventive care residency or fellowship program would be treated in the same way as a geriatric resident or fellow; that is a period of up to two years of such training would be treated as part of the initial residency and would not count towards the limitation on such period.

Effective date.—The provision related to publicly-funded residency programs applies to cost reporting periods beginning on or after October 1, 1990. The provision related to FICA taxes applies to cost reporting periods beginning on or after October 1, 1992. The provision related to preventive care residencies is effective on enactment.

3. Immunosuppressive drug therapy

PRESENT LAW

Medicare currently pays for immunosuppressive drug therapy for Medicare beneficiaries who have received organ transplants for one year following the date of the transplant procedure.

HOUSE BILL

No provision.

SENATE AMENDMENT

Extends Medicare coverage of immunosuppressive drug therapy to two years following the date of the transplant procedure in calender year 1995; to 30 months following a transplant procedure in calendar year 1996; and to 36 months following a transplant procedure in calendar year 1997 and thereafter.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment, with an amendment to revise the phase-in schedule of extended coverage. Effective January 1, 1993, coverage would be extended to an 18-month period. Effective January 1, 1994, coverage would be extended to a 24-month period. Effective January 1, 1995, coverage would be extended to a 30-month period. Effective January 1, 1996, coverage would be extended to a 36-month period.

4. Reduction in payments for erythropoietin

PRESENT LAW

Medicare is the principal purchaser of erythropoietin (EPO), an anti-anemia drug given to end-stage renal disease (ESRD) beneficiaries with a specified level of anemia. Payment for the drug is made as an add-on to the composite rate paid to facilities for dialysis treatment. Payments to facilities are made in increments of 1,000 unit doses, rounded to the nearest 100 units, with a maximum payment of $11 per 1,000 units.

For ESRD beneficiaries who are not treated through dialysis facilities, payment is made to physicians for drug costs in a variety of ways.

HOUSE BILL

No provision.

SENATE AMENDMENT

Reduces Medicare payments for erythropoietin by $1.00 per 1,000 units. The proposal would not alter payments to physicians for EPO.

Effective date.—Effective for services furnished on or after January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment.

5. Modifications to advance directives law enacted in OBRA 90

PRESENT LAW

OBRA 90 required hospitals, nursing homes, home health agencies, hospices and health maintenance organizations to provide written information to each individual concerning an individual's rights under State law to make decisions regarding their medical care, including the right to accept or refuse treatment and the right to formulate an advance directive; to document in the medical record whether an advance directive exists for each individual; to comply with the advance directive and to educate the staff about advance directives in general.

HOUSE BILL

No provision.

SENATE AMENDMENT

Adds renal dialysis facilities to the list of institutions required to furnish patients with advance directive information.

Effective date.—Effective for services furnished on or after January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

6. Medicare secondary payer

PRESENT LAW

Under current law, Medicare is secondary payer under specified circumstances when Medicare beneficiaries are covered by other third party payers. Medicare is also secondary payer to certain employer group health plans for items and services provided to aged and disabled beneficiaries.

In addition, Medicare is secondary payer to other insurance plans for 18 months for beneficiaries who are eligible for Medicare solely because they have end stage renal disease. After January 1, 1996, Medicare is secondary to other payers for a 12-month period.

The Department of HHS identifies Medicare secondary payer cases in the following ways: beneficiary questionnaires; provider identification of third party coverage when services are provided; Medicare contractor screening and data collection and exchange; and data transfers with other Federal and State agencies including the Internal Revenue Service and the Social Security Administration.

The Secretary is authorized to develop standards, criteria, procedures and reporting requirements to evaluate the performance of organizations facilitating Medicare payments to providers of services. Primary payers are required to make payments for any item or service for which Medicare is secondary payer when they receive notice that payments are due. The Secretary is authorized to charge interest on late recoveries under the Medicare Secondary Payer program.

House bill

No provision.

Senate Amendment

Extends the period for which Medicare is secondary to other payers to 24 months from January 1, 1993, to January 1, 1996, for beneficiaries who are eligible solely because of having ESRD. After January 1, 1996, until January 1, 1998, the period for which Medicare is secondary to other payers is eighteen months.

Effective Date.—Enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

In addition, the conference agreement includes the following provisions.

(a) Exemption for members of religious orders.—Clarifies that the Medicare secondary payer provisions do not apply to secondary payer situations identified after October 1, 1989, for services provided prior to such date to members of religious orders who are considered "deemed employees" because of an election of Social Security coverage.

(b) Survey of beneficiaries.—Requires the Administrator of HCFA to mail questionnaires to individuals, before such individuals become entitled to benefits under part A or enroll in part B, to determine whether the individual is covered under a primary plan. Prohibits denial of payment for covered services solely on the grounds that a beneficiary's questionnaire fails to note the existence of other health plan coverage.

(c) Mandatory screening by providers and suppliers under part B.—Requires providers and suppliers to complete information on claim forms regarding potential coverage under other plans. Establishes civil monetary penalties for an entity that knowingly, willfully and repeatedly fails to complete a claim form with accurate information.

(c) Requirements for fiscal intermediaries and carriers.—Requires contractors to submit a report to the Secretary annually regarding steps taken to recover mistaken payments. Also requires the Secretary to evaluate the performance of contractors in identifying cases in which Medicare is secondary payer.

(e) Deadline for reimbursement by primary payers.—Clarifies the Secretary's authority to charge interest if payment is not received within 60 days after notice is given.

7. Qualified Medicare beneficiary outreach

PRESENT LAW

The Medicare Catastrophic Coverage Act of 1988 required States to pay Medicare premiums, deductibles and coinsurance for "Qualified Medicare Beneficiaries" (QMBs). QMBs are those Medicare beneficiaries whose family incomes are below 100 percent of the Federal poverty level and whose resources are no more than twice the amount allowed under SSI.

The Omnibus Budget Reconciliation Act of 1990 accelerated the phase-in schedule for QMB coverage, and required States to pay premiums for QMBs with incomes up to 110 percent of poverty by January 1, 1993, and to 120 percent of poverty by January 1, 1995.

Less than half of eligible beneficiaries are currently participating in the QMB program.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

Requires the Secretary to establish and implement a method for obtaining information from individuals when they become entitled to benefits under part A or enroll in part B that may be used to determine eligiblity for benefits under the QMB program.

8. Extension of social health maintenance organization demonstrations (SHMOs)

PRESENT LAW

The Deficit Reduction Act of 1984 required the Secretary to grant three-year waivers for demonstrations of social health maintenance organizations (SHMOs). These demonstrations provide integrated health and long-term care services on a prepaid capitated basis. The Omnibus Budget Reconciliation Act of 1987 required the Secretary to extend the waivers for SHMOs through September 30, 1992. The Omnibus Budget Reconciliation Act of 1990 extended the waivers through December 31, 1995 and required the Secretary to add up to four additional sites. It also authorized $3.5 million for technical assistance and evaluation.

HOUSE BILL

No provision.

SENATE AMENDMENT

Extends the SHMO demonstrations for an additional 3 years. Specifies that one of the SHMO demonstration sites may enroll Medicare end stage renal disease (ESRD) beneficiaries.

Effective date.—Effective as if included in OBRA 90.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that it extends the demonstrations for 2 years and increases the enrollment limit per site to 12,000.

9. Hospice notification

PRESENT LAW

Medicare beneficiaries who are certified as terminally ill by a physician may elect to receive hospice benefits in lieu of other Medicare covered services. Skilled nursing facilities (SNFs) are required to provide each resident at the time of admission with a written statement of rights. SNFs must also inform each resident of services available and related charges for services, including any charges not covered under Medicare or by the facility's basic per diem charge. Home health agencies and hospitals are required to meet Medicare conditions of participation in order to receive reimbursement for treatment of Medicare beneficiaries. Conditions of participation for discharge planning in hospitals require an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires skilled nursing facilities and home health agencies to inform beneficiaries of the hospice benefit under Medicare, if a Medicare participating hospice is located in the geographic area or it is common medical practice to refer patients to hospices out of the area. SNFs would be required to provide the information to all beneficiaries at the time of admission as part of the oral and written statement of rights. As a condition of participation in Medicare, home health agencies would be required to provide the information in advance of the patient's coming under care of the agency. Hospital conditions of participation with respect to discharge planning would be modified to require an evaluation of a patient's likely need for appropriate post-hospital services, including hospice services, and the availability of those services.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment.

10. Interest payments

PRESENT LAW

The Social Security Act requires the payment of interest if payment is not made within 24 days of receipt of a clean claim for payment, and within 17 days in the case of a clean claim from a participating physician.

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires that interest payments be made on clean claims if payment is not made within 30 days of receipt for fiscal year 1993.
Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment.

11. Peer review organizations

PRESENT LAW

(a) Peer Review Organizations.—OBRA 90 required Peer Review Organizations (PROs) to provide notice to State licensing entities when a physician is found to have furnished services in violation of section 1154(a) of the Social Security Act. This subsection includes requirements that PROs review the quality of medical care and determine whether certain services are covered by Medicare. As drafted, OBRA 90 requires PROs to notify State boards in the case of a variety of administrative findings, as well as in the case of a problem regarding quality of care.
(b) Repeal of PRO precertification requirement.—Under current law, PROs are required to precertify selected surgical procedures.

HOUSE BILL

(a) Peer Review Organizations.—No provision.
(b) Repeal of PRO precertification requirement.—No provision.

SENATE AMENDMENT

(a) Peer Review Organizations.—Eliminates the requirement that PROs notify State boards regarding administrative matters, but PROs would continue to be required to notify them in cases of unnecessary or poor quality care. In addition, drafting errors in OBRA 90 would be corrected.
Effective date.—Enactment.
(b) Repeal of PRO precertification requirement.—No provision.

CONFERENCE AGREEMENT

(a) Peer Review Organizations.—The conference includes the Senate amendment.

(b) Repeal of PRO precertification requirement.—Repeals the requirement that PROs precertify selected surgical procedures.

12. Health maintenance organizations

PRESENT LAW

OBRA 90 required the Secretary to submit a proposal to Congress by January 1, 1992 providing for a more accurate method for HMOs paid on a risk basis. The Secretary was required to publish a proposed rule by March 1, 1992. The Comptroller General was required to review and report to Congress by May 1, 1992 on recommendations to modify the proposed methodology. OBRA 90 also contained a number of minor and technical drafting errors.

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires the Secretary to revise the payment methodology for HMOs for contract years beginning with 1994. In making revisions, requires the Secretary to consider (1) the difference in costs associated with beneficiaries with different health status; (2) the effects of using alternative geographic classifications; and (3) the difference in costs associated with beneficiaries for whom Medicare is the secondary payer. Requires the Secretary to submit a proposal to Congress on the revised payment methodology by January 1, 1993, and to publish a proposed rule before March 1, 1993. Requires the Comptroller General to review and report to the Congress by May 1, 1993, on the appropriateness of the proposed rule. Requires the Secretary to publish, by August 31, 1993, a final rule for contract years beginning on or after January 1, 1994.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the Secretary is required, in setting the average adjusted per capita costs (AAPCC) for an area, to take into account the difference in the proportion of beneficiaries in the area for whom Medicare is secondary and the proportion of such beneficiaries nationally.

Effective date.—Enactment, except that the requirement for adjustment of the AAPCC to reflect beneficiaries for whom Medicare is secondary applies to contract years beginning with 1994.

13. Medicare appeals

PRESENT LAW

Section 1869 of the Social Security Act provides procedures for the administrative review of certain claims under part B by individuals.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes a provision which is intended to assure continuation of the interpretation of the Medicare law which permitted judicial review of challenges to "methodology" for determining payment amounts under Part B of Medicare (as distinguished from challenges to the "amount of benefits" under part B) without requiring the filing of claims with, hearings before, or decisions by, the Secretary. The amendments made by section 9313 of the Omnibus Reconciliation Act of 1986 amendment section 1869 of the Social Security Act, which provided for hearings and review of individual claims and denials of such claims under part B, were intended to expand access to administrative and judicial review and were not intended to affect the judicial treatment of challenges to the validity of regulations or instructions or similar cases. In such a case a requirement for the filing of a claim, or a decision by the Secretary, would be inappropriate since the pursuit of administrative process would be necessarily futile. This clarification does not affect the prohibition of judicial review in certain cases described in section 1869(b)(4) of the Social Security Act.

14. Medicare administration budget process

PRESENT LAW

The Balanced Budget and Emergency Deficit Control Act of 1985 provides for certain adjustments to the discretionary spending limits provided in the Act. There are no adjustments relating to the discretionary spending under the Medicare program.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The Conference Agreement amends the Balanced Budget and Emergency Deficit Control Act of 1985 to provide that to the extent that appropriations are enacted that provide budget authority above a base level of spending in FY 1992 of $1.526 billion, the appropriate discretionary spending limits would be adjusted to accommodate additional budget authority in fiscal years 1993, 1994, and 1995. The adjustments would be cumulative and would equal $177 million in FY 1993, $198 million in FY 1994, and $220 million in FY 1995.

15. Other provisions relating to parts A and B of the Medicare program

PRESENT LAW

(a) Survey and Certification Requirements.—The Secretary is prohibited from imposing user fees on facilities for determining compliance with any requirement of Medicare. Current law could be interpreted to mean that user fees imposed pursuant to the Clinical Laboratory Improvement Act (CLIA) are prohibited. In addition, there are minor drafting errors regarding the survey and certification process.

(b) Other Technical Amendments.—No provision.

HOUSE BILL

(a) Survey and Certification Requirements.—No provision.

(b) Other Technical Amendments.—No provision.

SENATE AMENDMENT

(a) Survey and Certification Requirements.—Amends the law prohibiting user fees to clarify that user fees imposed under the Clinical Laboratory Improvement Act are not subject to the general ban on user fees.

Corrects minor and technical errors relating to a home dialysis demonstration program authorized under OBRA 90 and Medicare secondary payer requirements in OBRA 90. In addition, the provision corrects minor and technical errors in Sections 4201 through 4207 of OBRA 90.

(b) Other Technical Amendments.—No provision.

CONFERENCE AGREEMENT

(a) Survey and Certification Requirements.—The conference includes the Senate amendment.

(b) Other Technical Amendments.—In addition, the conference agreement includes a number of minor technical amendments relating to Parts A and B of the Medicare program.

16. Medicare supplemental insurance policies

PRESENT LAW

Section 1882 of the Social Security Act, as most recently amended by the Omnibus Budget Reconciliation Act (OBRA) of 1990, provides for minimum standards for Medicare supplemental insurance (Medigap) policies.

(a) Preventing duplication.—The OBRA 1990 amendments strengthen prohibitions against the sale of duplicative coverage to Medicare beneficiaries. The sale of a Medigap policy to an individual already covered under a Medigap policy is prohibited, as is, in general, the sale of a Medigap policy to a Medicaid beneficiary. Insurers are required to obtain written information from applicants regarding existing health insurance coverage.

The language also appears to prohibit the sale of any health benefits that duplicate any health coverage (including Medicare) to which a Medicare beneficiary is entitled.

(b) Loss ratios and refund of premiums.—The OBRA 1990 amendments increased the miminum loss ratio standard for individual Medigap insurance policies from 60 percent to 65 percent. The standard is 75 percent for group policies. Policy issuers are required to provide a refund or credit against future premiums if needed to meet the loss ratio requirements.

(c) Pre-existing condition limitations.—The OBRA 1990 amendments prohibit medical underwriting and certain other practices with respect to Medicare supplemental insurance policies for which an individual age 65 or older applies during the six month period beginning with the first month during which the individual is first enrolled for benefits under part B.

(d) Other miscellaneous technical corrections.—The conference report to accompany OBRA 1990 states the intent of the conferees that the National Association of Insurance Commissioners, in promulgating changes to the Model Medigap Regulations to conform with Federal requirements, would delete from section 12(C) all that follows "unless", which is an exception to limitations on certain sales commissions. The OBRA 1990 amendments also include a number of minor and technical drafting errors.

HOUSE BILL

No provision.

SENATE AMENDMENT

(a) Preventing duplication.—Clarifies the duplication provision by continuing to specifically prohibit the sale of a Medigap policy to an individual already covered under a Medigap policy and to prohibit, in general, the sale of a Medigap policy to a Medicaid beneficiary. Prior law would be restored with respect to the sale of other health insurance policies. That is, the sale of any health insurance policy, other than a Medigap policy, would not be considered duplicative if benefits are paid without regard to other health insurance coverage for which the individual is eligible. Other minor and technical drafting errors would be corrected.

(b) Loss ratios and refund of premiums.—Clarifies that the ORBA 1990 loss ratio standard would apply to policies sold or renewed after the effective date of the provision. With respect to a refund or credit for policies issued prior to the effective date of the provision, the calculation would be based on aggregate benefits provided and premiums collected for all policies issued by an insurer in a state and based only on aggregate benefits provided and premiums collected under the policies after the effective date. Other minor and technical drafting errors would be corrected.

(c) Pre-existing condition limitations.—Clarifies that the pre-existing condition limitations apply to any policy that becomes effective during the six month period beginning with the first month that an individual who is 65 years of age or older is first enrolled for benefits under part B, irrespective of when the policy is issued

or whether the application is submitted prior to the beginning of the six month period.

(d) Other miscellaneous technical corrections.—Clarifies the statutory language to restate the intent of the conferees that certain language be deleted from section 12(C) of the NAIC Model Regulations pertaining to sales commissions. The effective dates for various provisions would be modified. Other minor and technical drafting errors would be corrected.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment with modifications.

(a) Preventing duplication.—This provision continues the current law prohibition on the sale of duplicative health insurance policies subject to the conditions described in the following paragraph. The provision clarifies that it is unlawful to sell or issue to an individual entitled to benefits under Part A or enrolled under Part B: (i) a health insurance policy with knowledge that such policy duplicates health benefits to which such an individual is otherwise entitled under Medicare or Medicaid; (ii) a Medigap policy with knowledge that the individual is entitled to benefits under another Medigap policy; and, (iii) a health insurance policy, other than a Medigap policy, with knowledge that such policy duplicates health benefits to which the individual is otherwise entitled.

Penalties would not apply, however, to the sale or issuance of a policy or plan that duplicates health benefits under Medicare or Medicaid or a policy or plan that duplicates health benefits to which the individual is otherwise entitled if, under the policy or plan, all benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual. In addition, for the penalty to be waived in the case of the sale or issuance of a policy or plan that duplicates benefits under Medicare or Medicaid, the application for the policy must include a statement, prominently displayed, disclosing the extent to which benefits payable under the policy or plan dupilicate Medicare benefits.

Policies subject to the disclosure requirement include, but are not limited to: specific disease policies, hospital confinement indemnity policies, long term care policies, policies that provide fixed indemnity benefits for nursing home care, nursing services in the home or for home care, and policies that provide fixed indemnity benefits for any medical or surgical service or treatment.

The new provisions pertaining to non-duplication do not alter in any way the current law prohibition on the sale of a Medigap policy to a Medicaid beneficiary.

(b) Loss ratios and refund of premiums.—The Conference follows the Senate amendment, and includes minor and technical amendments.

(c) Pre-existing condition limitations.—The Conference agreement follows the Senate amendment with technical modifications. The provision clarifies the intent of OBRA '90 that, in the case of individuals enrolled in part B prior to age 65, Medigap insurers are

required to offer coverage, regardless of medical history, for a six-month period when the individual reaches age 65. Insurers are prohibited from discriminating in the price of policies for such an individual, based upon the medical or health status of the policyholder.

(d) Other miscellaneous technical corrections.—The Conference follows the Senate amendment, and includes a number of minor and technical amendments.

17. Medicare select

PRESENT LAW

As amended by the Omnibus Budget Reconciliation Act of 1990, the standards relating to Medicare supplemental policies, known as Medigap policies, provide for the sale of certain policies under which benefits for items and services provided by a network of health care providers may differ from benefits for items and services provided outside the network. These policies, known as Medicare Select policies, must meet certain requirements, and can be offered only in fifteen states chosen by the Secretary for a period of three years. In addition, the OBRA '90 amendments require that all Medigap policies conform to one of ten standard benefit packages, including a core benefit package that must be made available by all Medigap insurers, and nine other packages that an insurer has the option of offering. In general, Medigap policies may not be canceled and must be guaranteed renewable as long as premiums are paid.

HOUSE BILL

No provision.

SENATE AMENDMENT

Provides that Medicare Select policies could be offered in all states and the three year limitation would be eliminated. A health maintenance organization could offer a Medicare supplemental policy that does not conform to one of the ten standard benefit packages if (1) the benefits include at least the core benefit package, although the plan could charge nominal copayments, and (2) the benefit package including any copayments, when combined with Medicare benefits, is substantially similar to benefits provided to non-Medicare enrollees of the health maintenance organization. A Medicare Select policy may be canceled or not renewed in the case of an individual who leaves the service area of the policy, except that if the individual moves to an area for which the issuer of the Medicare Select policy (or an affiliate) offers a Medigap policy, the alternative policy must be made available to the individual.

Effective date.—The earlier of the date the State adopts the 1993 NAIC Model Regulation of the 1993 Federal Regulation, or 1 year after the date the NAIC or the Secretary first adopts such regulations. For States requiring legislation to meet the regulations, but having a legislature which is not scheduled to meet in 1994, the effective date is the first day of the first calendar quarter begin-

ning after the close of the first legislative session of the State legislature that begins on or after January 1, 1994.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

18. Hawaii health plan exemption from ERISA

PRESENT LAW

Section 514(a) of the Employee Retirement Income Security Act of 1974, (ERISA) provides that the Act supersedes any and all State laws that "relate to any employee benefit plan." Section 514(b)(2)(A) exempts from preemption State laws regulating insurance, except that States may not deem employee benefit plans to be engaged in the business of insurance for purposes of State insurance law (section 514(b)(2)).

Section 514(b)(5) generally exempts from preemption most provisions of the Hawaii Prepaid Health Care Act as it existed on September 2, 1974. State tax laws relating to employee benefit plans and amendments to the Hawaii Act adopted after that date, however, are preempted. The Secretary of Labor is authorized to enter into cooperative arrangements with the officials of the State of Hawaii to assist them in effectuating the policies of the Hawaii Act which are preempted.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The Hawaii Prepaid Health Care Act is not preempted by ERISA, unless the Secretary of Labor notifies the Governor of Hawaii that, as a result of any amendment to the Hawaii Act, the proportion of the population covered is less than the current proportion or the level of coverage is less than the actuarial equivalent of the current level of coverage. State tax laws relating to employee benefit plans would continue to be preempted.

D. MEDICAID PROVISIONS

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment contains various technical provisions relating to Medicaid.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

XI.—AUTHORIZATION FOR ADDITIONAL ASSISTANCE FOR DISTRESSED COMMUNITIES

PRESENT LAW

None.

SUBTITLE A—NATIONAL PUBLIC PRIVATE PARTNERSHIP PROGRAMS

Section 11001(b)(1). Head Start

HOUSE BILL

No provision.

SENATE AMENDMENT

Section 8001(b)(1) of the Senate Amendment authorizes additional funding for Head Start. Such authorization includes $40,000,000 for FY 1993; $42,000,000 for 1994; $44,000,000 for 1995; $46,000,000 for 1996; $49,000,000 for 1997; $51,000,000 for 1998; $54,000,000 for 1999; $56,000,000 for 2000; $59,000,000 for 2001; and $62,000,000 for 2002.

CONFERENCE AGREEMENT

The House recedes with an amendment requiring all funds to be expended on programs and activities that directly and principally benefit residents of the zones.

Section 11001(b)(2). Community Health Centers

HOUSE BILL

No comparable provision.

SENATE AMENDMENT

Section 8001(b)(2) of the Senate Amendment provides additional authorizations for Community Health Centers. Such authorizations include $20,000,000 in FY 1993; $21,000,000 in 1994; $22,000,000 in 1995; $23,000,000 in 1996; $24,000,000 in 1997; $26,000,000 in 1998; $27,000,000 in 1999; $28,000,000 in 2000; $30,000,000 in 2001; and $31,000,000 in 2002.

CONFERENCE AGREEMENT

The House recedes with an amendment requiring all funds to be expended on programs and activities that directly and principally benefit residents of the zones.

Section 11001(b)(3). National Community Economic Partnership Program

HOUSE BILL

No comparable provision.

SENATE AMENDMENT

Section 8001(b)(3) of the Senate Amendment authorizes funding for the National Community Economic Partnership. Such authorizations include $40,000,000 for FY 1993; $42,000,000 for 1994; $44,000,000 in 1995; $46,000,000 in 1996; $49,000,000 in 1997; $51,000,000 in 1998; $54,000,000 in 1999; $56,000,000 in 2000; $59,000,000 in 2001; and $62,000,000 in 2002.

CONFERENCE AGREEMENT

The House recedes with an amendment requiring 50 percent of such authorized amounts to be expended on programs and activities that directly and principally benefit residents of the zones.

Section 11001(b)(4). Job Corps

HOUSE BILL

No comparable provision.

SENATE AMENDMENT

Section 8001(b)(4) of the Senate Amendment authorizes funding for the Job Corps. Such authorizations include $40,000,000 in FY 1993; $42,000,000 in 1994; $44,000,000 in 1995; $46,000,000 in 1996; $49,000,000 in 1997; $51,000,000 in 1998; $54,000,000 in 1999; $56,000,000 in 2000; $59,000,000 in 2001; and $62,000,000 in 2002.

CONFERENCE AGREEMENT

The House recedes with an amendment requiring all funds to be expended on programs and activities that directly and principally benefit residents of the zones.

Section 11001(b)(5). Enterprise Capital Access Fund

HOUSE BILL

No comparable provision.

SENATE AMENDMENT

Senate 8001(b)(5) of the Senate Amendment authorizes funding for the Enterprise Capital Access Program. Such authorizations include $25,000,000 for FY 1993 and various sums for years thereafter.

CONFERENCE AGREEMENT

The House recedes with an amendment providing authorizations in the amounts of $20,000,000 for FY 1993; $21,000,000 for 1994; $22,000,000 in 1995; $23,000,000 in 1996; $24,000,000 in 1997;

$26,000,000 in 1998; $27,000,000 in 1999; $28,000,000 in 2000; $30,000,000 in 2001; and $31,000,000 in 2002. The House amendment requires 50 percent of all funds provided in this title to be expended on programs and activities that directly and principally benefit residents of the zones.

Section 11001(b)(6). YouthBuild

HOUSE BILL

No comparable provision.

SENATE AMENDMENT

Section 8001(b)(6) of the Senate Amendment provides for authorization of $15,000,000 in FY 1993 for YouthBuild under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, and for various sums in subsequent years.

CONFERENCE AGREEMENT

The House recedes with an amendment providing $10,000,000 in FY 1993; $11,000,000 in 1994 and 1995; $12,000,000 in 1996 and 1997; $13,000,000 in 1998 and 1999; $14,000,000 in 2000; $15,000,000 in 2001; and $16,000,000 in 2002 and requiring all funds to be expended on programs and activities that directly and principally benefit residents of the zones.

Section 11001(b)(7). Neighborhood Reinvestment Corporation.

HOUSE BILL

The section amends the Housing and Community Development Act of 1978 and authorizes $53,000,000 over five years for projects in enterprise zones.

SENATE AMENDMENT

Section 8001(b)(7) of the Senate Amendment amends the Housing and Community Development Act of 1978 and authorizes the following amounts for the Neighborhood Reinvestment Corporation: $10,000,000 in FY 1993; $11,000,000 in 1994 and 1995; $12,000,000 in 1996 and 1997; $13,000,000 in 1998 and 1999; $14,000,000 in 2000, $15,000,000 in 2001; and $16,000,000 in 2002.

CONFERENCE AGREEMENT

The House recedes with an amendment requiring all funds to be expended on programs and activities that directly and principally benefit residents of the zones.

United States Attorneys

HOUSE BILL

Section 8031 of the House bill authorizes $47 million over five years in the United States Attorneys account for coordination of law enforcement activities in the zones.

SENATE AMENDMENT

No comparable provision.

CONFERENCE AGREEMENT

House recedes.

Minority Enterprise Business Investment Companies.

HOUSE BILL

Section 8033 of the House bill authorizes $10,000,000 for MESBICs over five years for activities in tax enterprise zones.

SENATE AMENDMENT

No comparable provision.

CONFERENCE AGREEMENT

House recedes.

High Risk Youth

HOUSE BILL

No comparable provision.

SENATE AMENDMENT

Section 811(b)(8) provides $15,000,000 in an additional authorizations for ASAMHA's High Risk Youth program and various amounts for subsequent years.

CONFERENCE AGREEMENT

Senate recedes.

SUBTITLE B—BLOCK GRANT FUNDING FOR ELIGIBLE PROGRAMS

Sec. 11101. Authorization of appropriations.

HOUSE BILL

Section 8001 of the House bill creates two new block grant programs—one for urban tax enterprise zones, the other for rural development investment zones. The block grant funding is available for the expansion of Federal social programs for the zones. Administration of the programs is assigned to a special interagency Executive branch council.

Section 8001(a) authorizes $1,877,600,000 over five years for urban enterprise zones; $384,000,000 is authorized for FY 1993.

Section 8001(b) authorizes $469,700,000 over five years for rural enterprise zones (including Indian reservations); $96,200,000 is authorized for FY 1993.

Section 8001(c) provides that appropriations made available under this section are available through the end of Fiscal Year 1997.

SENATE AMENDMENT

Section 8101(a) authorizes $4,155,000,000 for five years, with such sums as may be necessary from 1998 to 2001 for urban, rural, and Indian reservation enterprise zones; $300,000,000 is authorized for FY 1993.

This section also states that authorized amounts must at least equal the lost revenue attributable to enterprise zone tax preference less amounts designated by this title for activities outside the tax enterprise zones. The Senate Amendment makes no statement on the availability of funds over five years.

CONFERENCE AGREEMENT

The Senate recedes to the House on authorization levels for 1993 through 1997 with an amendment to authorize $1,655,000,000 over five years; $320,000,000 is authorized for FY 1993. The House recedes to the Senate on authorization levels for FY 1998 through FY 2001. The Senate recedes to the House on the availability of funds with an amendment that funds appropriated for each fiscal year beginning in 1993 shall be available until the end of the fiscal year immediately following the year for which the funds are appropriated.

Section 11102. Allocation of amounts among tax enterprise zones

HOUSE BILL

Section 8002 of the House bill provides that funds for the block grants in 1993 shall be determined by equally dividing the amounts available by the number of zones that may be designated by the relevant Secretary in calendar year 1993.

The House bill further provides that funds appropriated in FY 1994 through 1997 shall be apportioned by the interagency council in such a manner as to assure a generally equivalent distribution of total funds to all zones for the entire period.

SENATE AMENDMENT

The Senate amendment contains a different formula which utilizes a weighted allocation based on the number of low-income persons in each zone without regard to rural or urban designations.

CONFERENCE AGREEMENT

The Senate recedes to the House with an amendment which specifies the creation of a single block grant for both urban tax enterprise zones and rural investment development zones. Funding from the block grant shall be apportioned 70 percent to urban enterprise zones and 30 percent to rural investment development zones and then divided equally among zones within the two categories (Sec. 8102(b)).

Sec. 11103. Uses of amounts

HOUSE BILL

The House bill provides for the creation of five program categories for which block grant funding is available. Twenty percent of the funding for the zones is allocated to each category with program choices to be made from the "menu" of programs provided. These caps may be waived by the interagency task force to a maximum of 30 percent and a minimum of five percent. The single exception is the Young Adult Employment Demonstration Program, for which 25 percent of the funding in the Job Training category is to be expended. This program, targeted to at-risk youth up to age 30.

SENATE AMENDMENT

The Senate amendment provides a similar structure of five categories with a waiver of up to 40 percent maximum and a five percent minimum.

CONFERENCE AGREEMENT

Senate recedes.

Section 11104. Eligible programs

HOUSE BILL

The House bill lists the following categories and assigned programs eligible for funding:

CRIME AND COMMUNITY POLICING

DOJ: Community policing under the Byrne Program
DOJ: Alternative sanctions
HHS: Gang Intervention
HHS: Community Youth Activity Program
HHS: Comprehensive Child Development
HHS: Family Resources Centers

JOB TRAINING

Labor: Young Adult Employment Demonstration Program
Labor: Job Corps
Labor: JTPA (Title II)
Commission on National and Community Service: National Conservation and Youth Corps

EDUCATION

HHS: Head Start
HHS: Child Care
DEd: Chapter I
DEd: Vocational and Adult Education
DEd: TRIO (precollege outreach)

HEALTH AND NUTRITION

AG: WIC

HHS: Community Health Centers
HHS: Substance Abuse Treatment Improvement Grants
HHS: Substance Abuse Treatment Capacity Grant Expansion
HHS: Substance Abuse Treatment for Individuals under Criminal Justice Supervision
HHS: Substance Abuse Treatment for Pregnant Women

HOUSING AND COMMUNITY DEVELOPMENT

HUD: CDBG
HUD: Public Housing Modernization
HUD: Public Housing Drug Elimination Grants
HUD: Family Investment Centers
HUD: Rental Housing Assistance
HUD: Section 108 Emergency Loans
AG: Minority/Disadvantaged Farmers program

SENATE AMENDMENT

The Senate Amendment lists the following categories and assigned programs eligible for funding:

CRIME AND COMMUNITY POLICING

DOJ: Community policing
DOJ: Alternative sanctions
DOJ: Gang Intervention

JOB TRAINING

Labor: Young Adult Employment Demonstration Program
Labor: JTPA (Title II)
Labor: Job Corps
Labor: Community Job Opportunity Demonstration Program
Commission on National and Community Service: Conservation and Youth Corps
HUD: YouthBuild
Labor: Reverse Commute Demonstration
HHS: Community Services Block Grant

CHILD CARE AND EDUCATION

HHS: Comprehensive Child Development/Family Resources Centers
HHS: Child Care Block Grant
HHS: Head Start
DEd: Chapter I—Elementary and Secondary Education
DEd: TRIO

HEALTH, NUTRITION, AND FAMILY ASSISTANCE

Ag: WIC
HHS: Substance Abuse Treatment Improvement Grants
HHS: Substance Abuse Treatment Capacity Grant Expansion
HHS: Substance Abuse Treatment for Individuals Under Criminal Justice Supervision
HHS: Substance Abuse Treatment for Pregnant Women
HHS: Community Health Centers

HHS: Ryan White AIDS Health Care Act
HHS: Homeless Family Support Program

HOUSING AND COMMUNITY DEVELOPMENT

HHS: Community Development Corporations
HUD: CDBG (Increases Public Service Cap to 30%)
HUD: Public Housing Modernization
HUD: Public Housing Drug Elimination Grants
HUD: Rental Housing Assistance (waive 15% limit on project-based assistance)
HUD: HOME (reduced local match)
HUD: Capital Access Program
FmHA: 523 Self-Help TA
FmHA: 533 Rural Housing Preservation Grants
FmHA: 515 Rural Rental
FmHA: 521A Rural Rental Housing Assistance
FmHA: Water/Sewer Grants
FmHA: Private Business Enterprises Grants
Neighborhood Reinvestment Corporation

CONFERENCE AGREEMENT

The conference report lists the following programs available for funding under the block grant, and the categories under which they are to be considered.

CRIME AND COMMUNITY POLICING

DOJ: Community policing
DOJ: Alternative sanctions
DOJ: Gang Intervention

JOB TRAINING

Labor: Young Adult Employment Demonstration Program
Labor: JTPA (Title II)
Labor: Reverse Commute Demonstration
Commission on National and Community Service: Conservation and Youth Corps

CHILD CARE AND EDUCATION

HHS: Comprehensive Child Development/Family Resources Centers
HHS: Child Care Block Grant
DEd: Chapter I—Elementary and Secondary Education
DEd: TRIO
DEd: Literacy
DEd: Vocational and Adult Education

HEALTH, NUTRITION, AND FAMILY ASSISTANCE

Ag: WIC
HHS: Substance Abuse Treatment Improvement Grants
HHS: Substance Abuse Treatment Capacity Grant Expansion
HHS: Substance Abuse Treatment for Persons under Criminal Justice Supervision

HHS: Substance Abuse Treatment for Pregnant Women
HHS: Ryan White AIDS Health Care Act
HHS: Family Support Programs
HHS: High-Risk Youth
HHS: Emergency Child Protective Services Grants

HOUSING AND COMMUNITY DEVELOPMENT

HUD: CDBG
HUD: Public Housing Modernization
HUD: Public Housing Drug Elimination Grants
HUD: Family Investment Centers
HUD: Rental Housing Assistance
HUD: HOME
FmHA: 523 Self-Help TA
FmHA: 533 Rural Housing Preservation Grants
FmHA: 515 Rural Rental
FmHA: 521A Rural Rental Housing Assistance
FmHA: Water/Sewer Grants
FmHA: Private Business Enterprises Grants
FmHA: Minority and Disadvantaged Farmers
HUD: Section 108 Loan Guarantees

Section 11105. Application for funding

No significant disagreements.

Section 11106. Interagency council

HOUSE BILL

The House bill establishes an interagency council of Cabinet officers and agency heads with jurisdiction over programs included in the block grants. Members include the Secretaries of Agriculture, Education, Health and Human Services, Housing and Urban Development, and Labor; the Director of the Office of National Drug Control Policy; and the Attorney General.

In Section 8006(d) the House designates the Attorney General and the Secretary of HUD as co-chairs of the council with respect to the block grant for urban enterprise zones; the Attorney General and the Secretary of Agriculture as co-chairs of the council with respect to the block grant on rural development investment zones.

SENATE AMENDMENT

The Senate Amendment adds the Secretary of the Interior and the Chair of the National Commission on National and Community Service to the council.

The Senate Amendment has no comparable provision with respect to the chairs of the council.

CONFERENCE AGREEMENT

The House recedes to the Senate with respect to the Chair of the National Commission, and recedes with respect to the council chairs. The Senate recedes to the House with respect to the Secretary of the Interior.

Section 11107. Definitions

Identical provisions.

Section 11108. Study

Both the House bill and the Senate Amendment require the Interagency Council to conduct a study of the implementation of assistance under this title. The House bill requires the study in one year. The Senate Amendment requires the study in two years. The Senate recedes.

Section 11109. Regulations

Identical Provisions.

SUBTITLE C—OTHER PROGRAMS.

CHAPTER 1—COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Section 11201. Waiver of public services cap under Community Block Grant Program

Section 8051 of the House bill and Section 8201 of the Senate Amendment provide identical language that permits an additional 15 percent of CDBG funding to be used for public services within an enterprise zone.

Section 11202. Emergency loan guarantees for development activities.

HOUSE BILL

The House bill provided additional authorization in Section 108 of the Housing and Community Development Act of 1974 for guarantees of principal up to $500,000,000 without fiscal year limitation to qualified public entities for the establishment, development, and redevelopment of businesses within tax enterprise zones.

SENATE AMENDMENT

No comparable provision.

CONFERENCE AGREEMENT

Senate recedes with an amendment providing $2,000,000,000 each year over five years in additional authorizations for distressed areas under Section 108 of the Housing and Community Development Act of 1974.

CHAPTER 2—YOUNG ADULT EMPLOYMENT DEMONSTRATION PROGRAM.

Section 8053 of the House bill and Section 8203 of the Senate amendment create the Young Adult Employment Demonstration program for high-risk youth up to age 30. There were no significant disagreements.

CHAPTER 3—NATIONAL COMMUNITY ECONOMIC PARTNERSHIP ACT.

Part I. National Community Economic Partnership Investment Funds
Part II. Emerging Community Development Corporations.
Part III. Research and Demonstration.
Part IV. Miscellaneous Provisions

HOUSE BILL

No comparable provision.

SENATE AMENDMENT

Section 8204 of the Senate Amendment authorizes various amounts to stimulate economic development in distressed areas through public and private partnerships facilitated by Community Development Corporations.

CONFERENCE AGREEMENT

House recedes with an amendment limiting authorized amount in FY 1993 to $40 million.

CHAPTER 4—MISCELLANEOUS PROVISIONS.

Section 11261. Enterprise Capital Access Fund

HOUSE BILL

No comparable provision.

SENATE AMENDMENT

Section 8205 of the Senate bill authorizes this demonstration program and authorizes various amounts for its program and activities.

CONFERENCE AGREEMENT

House recedes.

Section 11262. Hope for Youth: YouthBuild

HOUSE BILL

No comparable provision.

SENATE AMENDMENT

Section 8206 of the Senate Amendment establishes YouthBuild, an employment and educational program for economically disadvantaged youth under the HOPE program, and authorizes various amounts for its activities.

CONFERENCE AGREEMENT

House recedes with an amendment making the authorization contingent on the failure to enact the Housing and Community Development Act of 1992.

Section 11263. Access to Jobs/Reverse Commuting Demonstration Program

HOUSE BILL

No comparable provision.

SENATE AMENDMENT

Section 8208 of the Senate Amendment establishes a Reverse Commuting Demonstration program under DOT and DOL to improve employment opportunities, job availability, and earned income of residents of enterprise zones.

CONFERENCE AGREEMENT

House recedes with an amendment to require that in FY 1993 $5,000,000 of the block grant funding be set aside for this demonstration program.

Section 11264. Study of insurance availability in central cities and distressed areas

The Senate Amendment requires the Comptroller General to study the availability of insurance in central cities and distressed areas. The House bill contains no comparable provision. The House recedes.

APPROPRIATION OF ADDITIONAL ASSISTANCE FOR ENTERPRISE ZONES.

PRESENT LAW

None.

HOUSE BILL

Title IX in the House appropriated for FY 1993, $384,800,000 for the Urban Enterprise Zone Block Grant; $96,200,000 for the Rural Enterprise Zone Block Grant; $4,000,000 for United States Attorneys; $5,000,000 for the Neighborhood Reinvestment Corporation; and $10,000,000 for MESBICs.

SENATE AMENDMENT

No comparable provision.

CONFERENCE AGREEMENT

House recedes because appropriations for this assistance have been provided by the Supplemental Appropriations, Transfers, and Recissions Act of 1992.

XII. HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT

PRESENT LAW

The Marine Mammal Protection Act of 1972 prohibits the importation of fish or fish products caught with large-scale driftnets in the South Pacific and tuna caught with driftnets anywhere on

the high seas after July 1, 1991, and prohibits the importation of any fish or fish products caught with large-scale driftnets anywhere on the high seas after July 1, 1992.

HOUSE BILL

No provision.

SENATE AMENDMENT

Subtitle A of the Senate amendment expands existing sanctions. It requires the Secretary of Commerce, in consultation with the Secretary of State, to publish a list of nations engaging in large-scale driftnet fishing practices beyond the exclusive economic zone of any nation, and requires the Secretary of the Treasury to deny entry into the United States of any large-scale driftnet fishing vessel of a nation on that list. It further provides for consultations with nations whose vessels are engaged in such fishing practices. If such consultations do not result in an agreement to immediately terminate the practices, the President is required to direct the Secretary of the Treasury to prohibit the importation into the United State from such nations of fish and fish products and sport fishing equipment. It provides for additional economic sanctions at the President's discretion on a finding by the Secretary of Commerce that this prohibition was insufficient to cause the termination of the practices.

Subtitle B of the Senate amendment broadens the import restrictions available to the President under the Fisherman's Protective Act of 1967 in response to practices of a country that diminish the effectiveness of international fishery conservation or endangered species programs, and expresses the sense of Congress that in carrying out trade negotiations, the President should seek to address environmental issues related to those negotiations.

Subtitle C of the Senate amendment prohibits U.S. vessels and nationals from fishing operations in the Central Bering Sea unless those are in accordance with an international fishery agreement, and requires the Secretary of the Treasury to deny entry into the United States of any fishing vessel listed by the Secretary of Commerce as conducting such operations.

Subtitle D of the Senate amendment amends various provisions of the Marine Mammal Protection Act of 1972 and the Magnuson Fishery Conservation and Management Act.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

XIII. GOVERNMENT RELATED CORPORATIONS

Prohibition on use of proceeds from issuance of U.S. Treasury securities unless entity is designated as qualified.

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

(1) *Prohibition on use of proceeds for certain purposes.*—Under the agreement Chapter 31 of Title 31 of the United States Code would be modified to prohibit the lending of proceeds from any issuance of U.S. Treasury securities to a Government-related corporation, unless that corporation is designated as a qualified entity and listed in Title 31, or unless the amounts lent are approved in advance in an appropriations Act. This provision would apply only to amounts lent to newly created Government-related corporations established by any law enacted after December 31, 1992, and would not affect the Treasury's current authority to lend to existing corporations. The provision specifically reserves to Congress the right to at any time, alter, amend, or repeal any law establishing or governing the activities of such corporation.

(2) *Requirements to become a qualified entity.*—In order to become qualified, a qualified entity under Title 31, the enabling statute for a Government-related corporation would be required to address certain safety and soundness issues including effective federal supervision, minimum capital standards, and minimum rating standards by statistical rating organizations. Government-related corporations qualified under this provision are required to maintain one of the two highest investment grade ratings awarded by the statistical rating organizations unless the Secretary of the Treasury, in his sole discretion, waives this requirement.

(3) *Requirements for Federal oversight.*—

i. The Comptroller General of the United States and the Office of Management and Budget shall report to the Senate Committee on Banking and the House Committee on Ways and Means on the adequacy of provisions for effective federal supervision of safety and soundness contained in any bill to create a privately owned Government-sponsored enterprise.

ii. The Secretary of Treasury is required, on at least an annual basis, to obtain reports by nationally recognized statistical rating organizations which assess the likelihood that the qualified corporation will be able to meet its obligations with its own resources, and shall report to the House Committee on Ways and Means and the Senate Committee on Banking on any matter contained in the rating agency reports with which the Secretary disagrees.

iii. The Secretary of the Treasury shall annually prepare and submit to the Senate Committee on Banking and the House Committee on Ways and Means a report on the impact of the issuance or guarantee of securities by all Government-related corporations on interest rates and the amount of discount on U.S. Treasury obligations, and on the marketability of Treasury obligations, that is, the effects of competition between Treasury obligations and those of Government-related corporations. The first annual report would

be due on October 1 of the first calendar year that begins after enactment of this legislation.

Effective date.—On enactment.

XIV. SMALL GROUP HEALTH MARKET REFORM

A. Improvements in Health Insurance Affordability for Small Employers

1. Grants to States for small employer health insurance purchasing programs

Present Law

No provision.

House Bill

No provision.

Senate Amendment

Requires the Secretary to make grants to States to finance the administrative costs associated with developing and operating a group purchasing program for small employers, such as the costs associated with marketing and outreach efforts to inform small employers about the group purchasing program, negotiating with insurers to provide health insurance through such a program, or providing administrative functions such as eligibility screening, claims administration, and customer service.

Requires State grant applications to describe whether the program is to be operated by the State or through one or more State-sponsored private organizations and the details for such operation, any participation requirements for small employers, current and projected coverage rates of the eligible population, goals for reducing the costs of small employer insurance and expanding small employer coverage, approaches for enlisting insurers and small employers in the program, and the methods for evaluating the effectiveness of the program in increasing the number of uninsured and lowering the price of insurance.

Requires the Secretary in awarding the grants to consider the potential impact of a State's proposal on the cost of health insurance for small employers and on the number of uninsured, the need for regional variation in the awarding of grants, and funding programs employing a variety of approaches for establishing small employer health insurance. Prohibits grants from being awarded to States that do not meet the small group insurance standards required under the bill, or to States with group purchasing programs that do not meet those standards. Requires the States to annually report on their programs to the Secretary, and requires the Secretary to report to Congress by January 1, 1995 including information on the number and amount of grants awarded and an evaluation of the impact of the program.

Authorizes to be appropriated for fiscal years 1993, 1994, and 1995 such sums as may be necessary for the awarding of the grants.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate Amendment.

2. Study of use of Medicare rates by private health insurance plans

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires the Secretary to study and report to Congress by January 1, 1993 on the feasibility and desirability of the Secretary establishing payment rates, based upon Medicare payment rules, for optional use by private insurers. Provides that in developing the study, the Secretary take into account the findings and views of the Prospective Payment Assessment Commission and the Physician Payment Review Commission. Requires that the study and report evaluate: (1) the appropriateness of Medicare payment rules to determine payments for services furnished to non-Medicare populations (emphasizing services furnished to children); (2) the potential impact on private health insurance premiums, national health spending, and access to services (by Medicare beneficiaries and others) of requiring providers and practitioners to accept such rates as payment in full if the optional use of such rates is available to all private health insurance and employer health plans, or only to private health insurance sold to small employers or small employer health plans; and (3) the advantages and disadvantages of alternative mechanisms for enforcing such rates when private insurers opt to use them.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

B. IMPROVEMENTS IN HEALTH INSURANCE FOR SMALL EMPLOYERS

1. Standards and requirements of small employer health insurance reform

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

(a) Application of Standards to Small Employer Health Plans.—Requires that insurers offering health plans to small employers (those with from 2 to 50 employees normally working 30 hours a week or more) meet requirements of a State regulatory system certified by the Secretary as meeting Federal standards or, in a State without such a system, be certified by the Secretary. Requires States to submit periodic reports on their regulatory programs. Permits a State to enact more stringent standards than the Federal minimum. Allows a waiver of standards relating to rating if a State has equally stringent but not identical standards in effect prior to January 1, 1992. Provides that standards are to be developed by the National Association of Insurance Commissioners (NAIC) by September 30, 1992, and approved by the Secretary. In the absence of approved NAIC action, the Secretary is to develop standards by December 31, 1992. Standards must include alternative standards for guaranteed availability and guidelines with respect to demographic rating factors. Requires the Secretary to review State regulatory systems periodically; if a State's program is decertified, the Secretary is to assume regulatory authority for insurance plans in the State. Requires the General Accounting Office (GAO) to review periodically a sample of State regulatory programs and report findings to the Secretary and Congress.

(b) Registration with Applicable Regulatory Authority.—Requires an insurer to register with the State insurance commissioner or other applicable authority in each State in which it issues or offers health insurance plans to small employers.

(c) Guaranteed Eligibility.—Provides that an insurer may not exclude or limit coverage for any eligible employee (one who normally works 30 hours per week or more), or any spouse or dependent child. Permits insurers to exclude coverage when an employer imposes a waiting period for coverage (unrelated to preexisting condition) for new employees, so long as the period applies to all new employees.

(d) Guaranteed Availability.—Requires States to adopt a mechanism for guaranteeing availability of coverage to all small employers. Federal standards must specify options for States, including: (a) guaranteed issue with an optional or mandatory reinsurance program; or (b) assignment of high-risk groups either among all small group insurers or only among those that do not agree to guaranteed issue. Permits a State to adopt another approach with the approval of the Secretary. Standards must also prohibit discriminatory marketing practices. Requires the Secretary of HHS, along with the Secretary of the Treasury, to develop a system to guarantee availability in States without approved regulatory systems.

Provides that an insurer may not refuse to renew or terminate a group except for cause (nonpayment of premiums, fraud or misrepresentation, failure to meet minimum participation requirements, or repeated misuse of a provider network provision). An insurer imposing minimum participation requirements (enrollment of a minimum percentage of eligible employees not otherwise insured) must impose them uniformly on all groups of comparable size.

(e) Guaranteed Renewability.—Provides that health plans must be renewable at the option of the employer unless the insurer terminates all its small group business with 180 days notice to the State/Secretary and to all covered groups. An insurer that does so may not issue small group coverage in the State for 5 years from the date of termination of the last nonrenewed plan.

(f) No Discrimination Based on Health Status for Certain Services.—Prohibits an insurer from denying, limiting, or conditioning coverage or benefits on the basis of an individual's health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability. Permits temporary exclusion of coverage for preexisting conditions. Defines a preexisting condition as one diagnosed or treated within 3 months before coverage under the employer plan begins (without regard to any general waiting period applicable to all new employees). Allows a maximum exclusion of 6 months from the date on which coverage begins. The exclusion cannot be applied to services to newborns. If, at the time of enrollment, an individual is in a period of continuous coverage with respect to the services otherwise excluded, the exclusion must be reduced by 1 month for each month the person has been in such a period. A period of continuous coverage begins when an individual is enrolled in any health insurance arrangement with substantially similar benefits and ends when the individual has not been so enrolled for 3 months.

(g) Restrictions on Rating Practices.—Provides that the base premium rate for any block of business may not exceed the base premium rate for any other block by more than 20 percent. The base rate is the lowest rate in the block for a group with comparable coverage and the same demographic (age/sex, family size, geography) characteristics. Blocks may be established on basis of: sales force, acquisition from other insurer, association of 25 or more small employers. Permits an insurer to establish no more than six blocks of small employers. The insurer may not transfer a group to a different block of business without consent, and must offer any transfer to all employers in the block, regardless of risk, age/sex, family size, geography, duration of coverage, or other factors.

Provides that the limit on the variation between blocks does not apply if: (a) the block is one for which the insurer does not reject (on the basis of claims experience, health status, industry, or occupation) and never has rejected, small employers or otherwise eligible employees and dependents who enroll on a timely basis, (b) the insurer does not involuntarily transfer, and has never involuntarily transferred, a health plan into or out of the block of business, and (c) that block of business was available for purchase at the time the exception is requested.

Provides that the premium rate for any group in a block of business may not (for reasons other than age, sex, family size and geography) be more than 1.5 times the "base rate" for the block in the first 3 years after the effective date, or more than 1.35 times the base rate in later years. Requires that age/sex, family size, and geographic adjustment factors be consistent for all small employers. Prohibits a geographic rating area smaller than a county or a 3-digit zip code area, whichever is smaller.

Provides that the renewal premium increase for any group may not be more than 5 percentage points higher than the increase in the base premium rate for the block of business.

Requires insurers to provide information on rating and renewal practices at the time a plan is offered, including rating factors used for a particular group, to provide notice of renewal terms at least 60 days before a contract expires, and to provide the State or the Secretary an opinion by a qualified actuary that the rates are in compliance and actuarially sound.

(h) Requirements to Offer Specified Benefits.—Requires that if an insurer offers any health insurance plan to small employers in a State, the insurer also offer a standard benefit package and a basic benefit package. Requires any insurer that offers any small employer insurance plan in a State, and that also offers a managed care plan to larger employers in a State or geographic area, to offer the managed care plan to smaller employers. The insurer may cease enrolling new small groups in all or part of its managed care plan service area only if it closes enrollment to all employer groups in the same area.

Defines the standard benefit package to include inpatient and outpatient hospital care (with not less than 45 days per year for treatment of mental disorders); inpatient and outpatient physicians' services (not less than 20 visits per year for psychotherapy or counseling); diagnostic tests; preventive services limited to prenatal and well-baby care provided to children age 1 or younger; well child care; Pap smears; mammograms; and colorectal screening services. Permits limits on preventive services if the limits are reasonably consistent with recommendations and periodicity schedules developed by appropriate medical experts.

Provides that, notwithstanding any other provision of this bill, the standard health benefit package cover items and services for the treatment of severe mental illness, as defined by the Secretary, equally with items and services covered for the treatment of other illness without regard to any special limits placed on mental health benefits. Provides that if the Secretary finds that this requirement increases the cost of a standard benefit package, the Secretary must revise the provisions of the standard benefit package so that it is no more costly than it would have been without this requirement.

Prohibits insurers issuing a standard benefit package from requiring an employee to contribute more than 20 percent (for full-time employees) and 50 percent (for part-time employees) of the plan's monthly premium. Limits deductibles to $400 for an employee or single family member, and $700 per family for plan years beginning before January 1993. Indexes deductible amounts in subsequent years to the CPI–U (consumer price index for all urban consumers). Provides alternatively for the use of a wage-related deductible not to exceed 1 percent of an employee's wages for individual or family member coverage or 2 percent of wages per family.

Limits copayments or coinsurance to 20 percent; cost-sharing cannot exceed the out-of-pocket limit. Permits higher copayments or coinsurance to be charged by managed care plans for items and services provided by nonparticipating providers, and by a health insurance plan for failure to comply with utilization program re-

quirements. Permits up to 50 percent coinsurance for mental health services.

Limits out-of-pocket expenses to $3,000 per year for individuals or families for plan years beginning before January 1, 1993. Indexes the out-of-pocket limit to the CPI–U. Provides alternatively for a wage-related, out-of-pocket limit not to exceed 10 percent of wages.

Defines the basic benefit package to include payment for inpatient and outpatient hospital care, including emergency services, inpatient and outpatient physician services, diagnostic tests, and preventive services. Permits a basic benefit package to include coverage for treatment of a mental disorder. Permits insurers to impose premiums, deductibles, copayments, or other cost-sharing on enrollees in small employer plans, but requires a limit on out-of-pocket expenses.

Preempts State laws or regulations that require health insurance plans offered to small employers to include items and services other than those specified under the standard and basic benefit packages offered to small employers except those laws or regulations requiring coverage of newborns, adopted children, or other specified categories of dependents.

Effective date.—Applies to health insurance plans offered, issued, or renewed for a small employer in a State on or after January 1, 1994. Permits a delay when State legislative action is required and the legislature does not meet in 1993. Limitations on premium variation related to risk factors and limits on premium differences among blocks of business do not apply to health insurance plans in effect on the effective date, or to renewals of such plans, until 2 years after the effective date.

Conference Agreement

The conference agreement does not include the Senate amendment.

2. Excise tax on premiums received on health insurance policies which do not meet certain requirements

Present Law

No provision.

House Bill

No provision.

Senate Amendment

Imposes a Federal excise tax on a person issuing a health insurance plan to a small employer that fails to meet the specific standards of the bill. Requires the Secretary to determine whether any person meets those standards. Specifies the tax to be equal to 25 percent of the gross premiums received during the taxable year with respect to all health insurance plans issued to a small employer by the person on whom the tax is imposed. Defines all corporations which are members of the same controlled group of corpora-

tions to be one person. Defines partnerships, proprietorships, and other trades or business under common control to be one person.

Provides that the tax not apply in cases where: (1) the person did not know, and exercising reasonable diligence, would not have known that a failure existed, and (2) deficiencies are promptly corrected. Permits the Secretary, in the case of a failure due to reasonable cause and not to willful neglect, to waive the tax to the extent that its payment would be excessive relative to the failure. Provides for the nondeductibility of the tax.

Defines health insurance plan to mean any hospital or medical service policy or certificate, hospital or medical service plan contract, HMO group contract, or multiple employer welfare arrangement (MEWA), but does not include a self-insured group heath plan, a self-insured multiemployer group health plan, or specified other types of policies. Applies the provisions of the bill to the insurer of the arrangement in the case of a MEWA. Defines small employer to mean an employer normally employing in a year more than 1 but less than 51 eligible employees on a typical business day. Includes self-employed individuals as employees. Defines eligible employee to mean one who normally performs on a monthly basis at least 30 hours of service per week. Defines a person to mean any person that offers a health insurance plan to a small employer, including a licensed insurance company, a prepaid hospital or medical service plan, a HMO, or a MEWA.

Effective date.—Enactment, except that the nondeductibility of the excise tax applies to taxable years beginning after December 31, 1991.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

3. General Accounting Office study and report on rating requirements and benefit packages for small group health insurance

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires the General Accounting Office (GAO) to study and report to Congress by January 1, 1995, on the impact of standards for small group health insurance rating practices, the availability and price of small employer insurance, the differences in available benefit packages, the number of employers choosing standard or basic benefit packages, and the number of employers choosing to self-insure. It must also report on differences in State laws and regulations affecting the availability and price of health insurance sold to individuals and the impact of such laws and regulations, including the extension of small group requirements to individual

health insurance and the establishment of State risk pools for individual health insurance. In addition, the GAO would be required to make recommendations with respect to adjusting the rating standards to eliminate variation in small employer premiums resulting from adjustments for such factors as claims experience, health status, age, sex, and other demographic factors.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

C. IMPROVEMENTS IN PORTABILITY FOR PRIVATE HEALTH INSURANCE

1. Excise tax imposed on failure to provide for preexisting condition

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

Imposes a Federal excise tax on a group health plan or any person failing to meet the preexisting condition, nondiscrimination, and disclosure requirements of this section with respect to any covered individual. Specifies the tax to equal $100 per day for each failure with respect to a covered individual for each day out of compliance. Provides that a failure shall be treated as corrected if the failure is retroactively undone to the extent possible, and the covered individual is placed in a financial position as good as such individual would have been in had the failure not occurred. Provides that the tax not be imposed: (1) for any period for which it is established by the Secretary that none of the persons knew, or exercising reasonable diligence would have known, that the failure existed; and (2) if the failure was due to reasonable cause and not to willful neglect, and such failure is corrected during a specified period. Permits the Secretary to waive part or all of the tax imposed to the extent that payment of the tax would be excessive relative to the failure.

Provides that the tax liability apply to the insurer, except that it apply to the employer in the case of a self-insured group health plan, and to the plan in the case of a multiemployer health plan. Provides also that the tax apply to each person legally responsible for administering or providing benefits under the group health plan, health insurance plan, or other health benefit arrangement (including a self-insured plan) and whose act or failure to act caused the noncompliance.

Prohibits a group health plan from denying, limiting or conditioning the coverage under (or benefits of) the plan based on health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual, except for limited preexisting condition exclusions. Limits preexisting condition exclu-

sions to 6 months for conditions evident or treated within 3 months before the individual becomes covered. Provides that preexisting condition exclusions cannot be applied to services furnished to newborns. Provides that a preexisting condition exclusion be reduced 1 month for every month an individual has been in a period of continuous coverage. Defines a period of continuous coverage to mean, with respect to particular services, the period beginning when an individual is enrolled under a health insurance plan, Medicare, Medicaid, or other health benefit arrangement, and ends when the individual has not been enrolled for a continuous period of more than 3 months. Requires that any person who has provided coverage (other than Medicare or Medicaid) during a period of continuous coverage to disclose, upon the request of a group health plan the coverage provided the covered individual, the period of such coverage, and the benefits provided under such coverage.

Effective date.—Applies to plan years beginning on or after December 31, 1992.

CONFERENCE AGREEMENT

The conference agreement does nct include the Senate amendment.

D. HEALTH CARE COST CONTAINMENT

1. Establishment of Health Care Cost Commission

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

Establishes a Health Care Cost Commission to be composed of 11 members appointed by the President, by and with the advice and consent of the Senate. Members are to include experts on health insurance, health economics, provider reimbursement, and related fields, and must also include representatives of consumers, employers, State and local government, labor, providers, insurers, and experts on medical technology. Requires initial appointments within 6 months of enactment. Provides that the term of the Chairman will coincide with that of the President; terms of other members would be 3 years and would be staggered.

Requires the Commission to report to the President and Congress on national health care costs by March 30 of each year, including information on: (1) levels and trends in public and private health care spending by type of service, geographic region of the country, and public and private sources of payment; (2) levels and trends in the cost of private health insurance; (3) sources of high and rising health care costs; and (4) comparative trends in other countries and reasons for any differences from trends in the United States. The report would also discuss and assess the impact of public and private efforts to reduce growth in health care spending

and include recommendations for cost containment efforts. Requires the Commission to make recommendations to the Secretary for development and ongoing review of managed care plans and utilization review programs.

Requires the Commission's first report to include recommendations for a national uniform claims form, national standards for reporting insurance coverage provisions, national standards for reporting by providers of diagnoses, services, and costs, and a strategy and schedule for implementing the recommendations by January 1, 1996. Requires that the Commission consider the potential use of electronic cards or other technology, confidentiality, and implementation issues for rural and inner-city areas. Provides that the Commission is to report annually on progress in implementing the standards and other approaches for reducing administrative costs.

Authorizes the Commission to employ staff, obtain assistance and information from other agencies, and enter into contracts. Specifies compensation for commissioners and bill authorizes to be appropriated for the Commission such sums as may be necessary.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

2. Federal certification of managed care plans and utilization review programs

PRESENT LAW

No provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires the Secretary to develop a process for certification and periodic recertification of qualified managed care plans and qualified utilization review (UR) programs within 2 years after enactment. Defines a managed care plan as one operated by an insurer, HMO, employer or employee organization, or contractor that arranges for financing and delivery of services through arrangements with participating providers and that has explicit standards for provider selection, ongoing quality assurance and UR, and financial incentives for enrollees to use participating providers. Provides that a managed care plan shall be deemed certified if it meets the requirements for a risk-sharing contract under Medicare, or if it is certified by a State licensure program or national accreditation body whose standards, in the judgment of the Secretary, are at least equivalent to the Federal standards.

Provides that standards for managed care plans would relate to provider qualifications and staffing levels, quality assurance and emergency services. Standards for both managed care plans and

UR programs would relate to qualifications of reviewers, review procedures, timeliness, appeals, confidentiality, and payment to providers for costs of responding to UR information requests.

Prohibits a State from limiting the ability of a qualified managed care plan to: use financial incentives to encourage enrollees to use plan providers; restrict coverage of out-of-plan services or services not authorized by a primary care provider; or negotiate rates (except in a State with an all-payer system) or contract with a limited number of providers. Prohibits a State from limiting the ability of a qualified managed care plan or qualified utilization review program to use UR procedures or criteria; requiring disclosure of review criteria; specifying the hours, qualifications, or residence of reviewers; requiring payment to providers of the costs of responding except as specified in Federal standards; limiting payment for UR; restricting access to needed information; or defining UR as the practice of medicine or another health profession. Permits a State to require that UR be conducted by licensed health professionals and that appeals be reviewed by physicians or by appropriate specialists. Permits a State Medicaid program to impose standards on managed care plans or UR programs as necessary to comply with Federal Medicaid requirements.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

3. Additional funding for outcomes research

PRESENT LAW

The Omnibus Budget Reconciliation Act of 1989 authorized funding in the Department of Health and Human Services through the Agency for Health Care Policy and Research, for research on the outcomes, effectiveness, and appropriateness of health care services and procedures. Authorization for appropriations for these activities are set at $110 million for fiscal year 1992, two-thirds of which is appropriated from Medicare trust funds; $148 million for fiscal year 1993; 70 percent of which is appropriated from the Medicare trust funds; and $185 million for fiscal year 1994, 70 percent of which is appropriated from the Medicare trust funds.

HOUSE BILL

No provision.

SENATE AMENDMENT

Authorizes appropriations of $175 million in fiscal year 1992, $225 million in fiscal year 1993, $275 million in fiscal year 1984, and $300 million in fiscal year 1995. Provides that the amount contributed from the Medicare trust funds in fiscal years 1993 and 1994 would be reduced to 50 percent of the total appropriation.

Effective date.—Enactment.

CONFERENCE REPORT

The conference report does not include the Senate amendment.

E. MEDICARE PREVENTION BENEFITS

1. *Coverage of certain immunizations*

PRESENT LAW

With certain exceptions, Medicare does not generally cover preventive health services. OBRA 1987 established a demonstration project to test the cost effectiveness of including coverage of influenza vaccine under the Medicare program. The legislation required that a report on the cost effectiveness of the benefit be submitted to Congress by October 1, 1990. If the results were inconclusive, the demonstration would be extended an additional two years with a final report submitted to Congress by April 1, 1993. The demonstration is slated to end September 1992. Medicare will not pay for influenza vaccines except at the designated test sites.

HOUSE BILL

No provision.

SENATE AMENDMENT

Authorizes Medicare Part B coverage for influenza vaccine and its administration and tetanus-diphtheria booster and its administration. Payment may not be made more frequently than once a year for the influenza vaccine and once every ten years for the tetanus diphtheria booster.

Effective date.—Applies to influenza vaccines administered on or after October 1, 1992 and tetanus diphtheria boosters administered on or after January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

2. *Coverage of well-child care*

PRESENT LAW

Medicare coverage is provided for persons suffering from end-stage renal disease. Included in this group are approximately 300 children under the age of 7.

HOUSE BILL

No provision.

SENATE AMENDMENT

Authorizes Medicare Part B coverage for well-child services provided to an individual who is entitled to Medicare and is under 7 years old.

Defines "well-child services" as well child care, including routine office visits, routine immunizations (including the vaccine itself), routine laboratory tests, and preventive dental care, which are provided in accordance with a periodicity schedule. The Secretary is required to establish this periodicity schedule in consultation with the American Academy of Pediatrics, the Advisory Committee on Immunization Practices, and other entities considered appropriate by the Secretary. The periodicity table is to reflect the appropriate frequency with which the covered services should be provided to healthy children. Medicare payment is precluded for services provided at more frequent intervals than specified in the periodicity table.

Effective date.—Applies to well-child services provided on or after January 1, 1993.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

3. Demonstration projects for coverage of other preventive services

PRESENT LAW

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended by OBRA 1990, requires the Secretary to establish a 5 year demonstration program to measure the costs and benefits of providing preventive services to Medicare beneficiaries. The program must be conducted at no fewer than five demonstration sites. An interim report is due April 1993 and a final report (including a comprehensive evaluation of the long-term effects of the program) is due April 1995.

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires the Secretary to establish and provide for a series of ongoing demonstration projects under which the Secretary is to provide coverage of specified preventive services under Medicare. The purpose of the projects is to test the feasibility and desirability of expanding Medicare's coverage of medical and other health services to include coverage of specified preventive services for all Part B beneficiaries. Further, the projects are to determine the appropriate methods for the delivery of the preventive services to Medicare beneficiaries.

Requires the Secretary to conduct the projects at the demonstration sites established under the COBRA provision as well as at such other sites the Secretary considers appropriate.

Requires the Secretary to cover the following services under the series of demonstration projects:

glaucoma screening;

cholesterol screening and cholesterol reducing drug therapies;

screening and treatment for osteoporosis, including tests for bone-mass measurement and hormone replacement therapy;

screening services for pregnant women, including ultrasound and clamydial testing and maternal serum alfa-protein;

one-time comprehensive assessment for individuals beginning at age 65 or 75;

prostate-specific antigen (PSA) testing; and

other services considered appropriate by the Secretary.

Not more than one specified service may be covered at each site.

Requires the Secretary to submit biennial reports, beginning October 1, 1994, to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce. The reports are to describe the findings made under the demonstration projects during the previous 2 years and the Secretary's plans for the projects during the succeeding 2 years.

Authorizes appropriations from the Federal Supplementary Medical Insurance trust fund of $4 million in FY 1993 and in FY 1994, $5 million in FY 1995 and in FY 1996, and $6 million in FY 1997.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

4. OTA study of process for review of Medicare coverage of preventive services

PRESENT LAW

Medicare law generally excludes coverage of preventive services. The Department has an established process for making coverage decisions for medical procedures and technologies which, if approved, could be included under one of the covered service categories (such as physicians' services).

HOUSE BILL

No provision.

SENATE AMENDMENT

Requires the Director of the Office of Technology Assessment (OTA), subject to the approval of the Technology Assessment Board, to conduct a study to develop a regular review process for consideration of coverage of preventive services under Medicare. The study is to include a consideration of the different types of evaluations, the use of demonstration projects to obtain data and experience, and the types of measures, outcomes and criteria that should be used in making coverage decisions.

Requires the OTA Director to submit a report on the study, within 2 years of enactment, to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

5. Financing of additional benefits

PRESENT LAW

Ordinarily, the basic Part B premium paid by enrollees is the lower of: (a) an amount sufficient to cover one-half of the program costs for the aged, or (b) the previous year's premium increased by the percentage increase in Social Security cash benefits payments.

This general requirement has been superseded since 1984. For the period 1984–1990, the Congress approved a series of amendments which set the Part B premium equal to 25 percent of the program costs for the aged. OBRA 1990 established specific dollar amounts for calendar years 1991–1995; these amounts were based on projections of 25 percent of program costs. The premiums established by OBRA 1990 are:

$29.90 in 1991
$31.80 in 1992
$36.60 in 1993
$41.10 in 1994
$46.10 in 1995

The calculation of the Part B premium will revert to the basic rules beginning in 1996.

HOUSE BILL

No provision.

SENATE AMENDMENT

Adds $0.10 per month to the Part B premiums for 1993–1996. (The amount is based on the Congressional Budget Office's estimate of 25 percent of the cost of the new benefits.) The premiums for these years are:

$36.70 in 1993
$41.20 in 1994
$46.20 in 1995

Specifies that (except as provided in provisions relating to delayed enrollment penalties and prohibiting reduction in social security checks) $0.10 is to be added to the monthly premiums otherwise determined for 1996 and 1997.

Effective date.—Enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

XV. CAR THEFT PREVENTION

Present Law

At present, Chapter 103 of Title 18, United States Code, does not define a Federal crime for armed carjacking. Similarly, United States Code does not provide for civil or criminal forfeiture of property that can be linked to various acts of auto theft or the commerce of stolen automobiles.

The FBI has recently instituted special task forces to assist State and local law enforcement officials in responding to the recent rash of armed carjackings.

House Bill

No provision.

Senate Amendment

The Senate amendment addresses car theft prevention with three measures:

(1) The amendment defines a new Federal offense for armed auto theft, as well as taking or attempting to take an auto by force and violence, or by intimidation. In addition, various acts of auto theft can result in civil or criminal forfeiture penalties.

(2) The amendment directs the Department of Justice to make grants to Anti Car Theft Committees to further assist them in deterring automobile theft.

(3) The amendment provides that the Secretary of Transportation and the Attorney General, acting jointly, may form a national task force composed of representatives from various government agencies, both Federal and State, and the private sector for the purpose of studying the problem of auto theft and recommending State or Federal remedies.

Conference Agreement

The conference agreement does not include the Senate amendment.

From the Committee on Ways and Means, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,
GUY VANDER JAGT,

Provided, that solely for consideration of sections 6211-6214 and 7101-7162 of the House bill, and sections 6211-6214, 7107-7177, and 7180-7181 of the Senate amendment, Mr. Downey is appointed in lieu of Mr. Stark and Mr. Shaw is appointed in lieu of Mr. Crane.

THOMAS J. DOWNEY,

Provided, that solely for consideration of sections 6201 and 7001–7014 of the House bill and sections 6201, 7001–7006, 7178 and 7179 of the Senate amendment, Mr. Jacobs is appointed in lieu of Mr. Stark and Mr. Bunning is appointed in lieu of Mr. Crane.

ANDREW JACOBS, Jr.,
JIM BUNNING,

Provided, that solely for consideration of sections 2171–2185, 6220–6251, and titles XIV–XVI of the Senate amendment, Mr. Gradison is appointed in lieu of Mr. Crane.

WILLIS D. GRADISON, Jr.,

Provided, that solely for consideration of title V of the House bill, and title V of the Senate amendment, Mr. Schulze is appointed in lieu of Mr. Crane.

RICHARD T. SCHULZE,

Pursuant to the authority granted on September 30, the Chair announces the following modifications in the appointment of conferees on H.R. 11, Revenue Act of 1992: As additional conferees from the Committee on Agriculture, for consideration of sections 7123, 7126 and title VIII of the House bill, and sections 7171 and 7173 and title VIII of the Senate amendment, and modifications committed to conference:

E DE LA GARZA,
ROBIN TALLON,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
MARY ROSE OAKAR,
CHALMERS P. WYLIE,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of section 9212 of the Senate amendment, and modifications committed to conference:

ESTEBAN E. TORRES,
CARROLL HUBBARD,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of section 9232 of the Senate amendment, and modifications committed to conference:

FRANK ANNUNZIO,
CARROLL HUBBARD,

As additional conferees from the Committee on Education and Labor, for consideration of sections 7123 and 7125 of the House bill, and sections 2173, 4246, 7102, 7134(c), 7142–7143, 7151, 7171, 7172, and 7176 of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
PAT WILLIAMS,
M.G. MARTINEZ,
CARL C. PERKINS,

As additional conferees from the Committee on Education and Labor, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
JOSEPH M. GAYDOS,

As additional conferees from the Committee on Energy and Commerce, for consideration of sections 7104, 7123, 7125, and 7126 of the House bill, and sections 2171-2173, 2175, 2177-2185, 6220, 6231-6251, 7109, 7121, 7136, 7171-7174, 10011(b), 10201, 14111-14140, titles XI, XV, and XVI of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
CARDISS COLLINS,
HENRY A. WAXMAN,
GERRY SIKORSKI,
TERRY L. BRUCE,

Provided, that solely for consideration of sections 10011(b) and 10201 and title XI of the Senate amendment, Mr. Markey, Mr. Synar, and Mr. Boucher are appointed in lieu of Mr. Waxman, Mr. Sikorski, and Mr. Bruce:

ED MARKEY,
MIKE SYNAR,
RICK BOUCHER,

As additional conferees from the Committee on Energy and Commerce, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,

As additional conferees from the Committee on the Judiciary, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
CHARLES SCHUMER,

As additional conferees from the Committee on the Judiciary, for consideration of section 9204 of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
DON EDWARDS,
MIKE SYNAR,
JOHN BRYANT,
HARLEY O. STAGGERS,

As additional conferees from the Committee on the Judiciary, for consideration of title X of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
CHARLES SCHUMER,
WILLIAM J. HUGHES,
JOHN BRYANT,
GEORGE E. SANGMEISTER,
F. JAMES SENSENBRENNER,

STEVEN SCHIFF,
JIM RAMSTAD,

As additional conferees from the Committee on Merchant Marine and Fisheries, for consideration of title XII and XIII of the Senate amendment, and modifications committed to conference:

GERRY E. STUDDS,
CARROLL HUBBARD,
WILLIAM J. HUGHES,
BILLY TAUZIN,
JOLENE UNSOELD,
BOB DAVIS,
DON YOUNG,

As additional conferees from the Committee on Ways and Means, for consideration of sections 7123, 7125, 7126, and title VIII of the House bill, and sections 2173, 7171, 7173, titles VIII and X of the Senate amendment, and modifications committed to conference:

ANDREW JACOBS, Jr.,
HAROLD E. FORD,
ED JENKINS,
TOM DOWNEY,
FRANK GUARINI,
MARTY RUSSO,
DON PEASE,

Managers on the Part of the House.

LLOYD BENTSEN,
MAX BAUCUS,
DAVID BOREN,
GEORGE MITCHELL,
DAVID PRYOR,
BOB PACKWOOD,
WILLIAM V. ROTH, Jr.,
JOHN C. DANFORTH,
JOHN H. CHAFEE,

From the Committee on Banking, Housing, and Urban Affairs; the Judiciary; and Labor, and Human Resources, for the consideration of title 8 of the Senate amendment only:

EDWARD M. KENNEDY,
DON RIEGLE,
JOE BIDEN,

Managers on the Part of the Senate.

O